Supreme Court of the United States

OCTOBER TERM, 1941.

No. 24.

SOUTHERN RAILWAY COMPANY,
Petitioner,

v.

ETHEL PAINTER, Administratrix of the Estate of GEOFFREY L. PAINTER, Deceased,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF RESPONDENT.

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STATEMENT.

Petitioner's statement is correct that this case is here upon writ of certiorari (R. 99) to review the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, affirming an injunctional order issued by the District Court of the United States for the

Eastern District of Missouri (R. 42-49, 73-76) upon a supplemental complaint filed by respondent in an action there pending by her against the petitioner railway here under the Federal Employers' Liability Act (R. 2, 7, 14-26), by which injunction petitioner railway was restrained and enjoined from enforcing against respondent an injunction issued at petitioner's instance by the Chancery Court of Knox County, Tennessee, and mandatorily commanding petitioner to dismiss and set at naught its action in the Tennessee state court, the sole purpose of the proceeding in, and the injunction issued by, the Tennessee state court being to restrain and enjoin respondent from further maintaining and prosecuting her said action in the said District Court of the United States, and to divert the litigation of that action to one of the courts designated in the Tennessee state court injunction.

The statement of the facts made in petitioner's brief, while not inaccurate in so far as it goes, has been so shortened as to omit many facts which we believe must be given consideration in order to arrive at a correct decision of this case. That, together with our conviction that a more or less chronological statement will be of material assistance to this Honorable Court, compels us to make our own statement of the facts involved.

The petitioner, Southern Railway Company, was and is a corporation organized and existing under the laws of the State of Virginia, a citizen and resident of that state, with its principal office in the City of Richmond, Virginia, a common carrier by railroad engaged in interstate commerce in various of the several states of the United States, doing business as such common carrier in the City of St. Louis, State of Missouri, in the Eastern Judicial District of Missouri, and operating its railroad trains in, into and out of said City of St. Louis (R. 16, 26, 42).

On February 3, 1939, one Geoffrey L. Painter, a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee, while in the course of his employment by petitioner railway as a locomotive fireman on one of its interstate trains running between Bull's Gap, Tennessee, and Asheville, North Carolina, and while engaged with petitioner in interstate commerce and transportation, sustained fatal injuries as a direct result of the derailment of said train at or near the Town of Paint Rock, County of Madison, State of North Carolina, and left surviving him his wife, Ethel Painter (the respondent here), and several minor dependent children (R. 2, 3, 6, 7, 8, 9, 10, 11, 14-15, 27, 32-43).

Thereafter said Ethel Painter, also a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee (R. 16, 27, 43), was duly appointed administratrix of the estate of said Geoffrey L. Painter, deceased, by the Probate Court of Knox County, Tennessee (R. 2, 7, 15, 27, 43), and, on August 31, 1939, filed an action against petitioner railway, under the Federal Employers' Liability Act (45 U. S. C. A., [illegible] 51-59), in the District Court of the United States for the Eastern Judicial District of Missouri, to recover damages for the injuries to and death of her decedent, for the benefit of his said surviving widow and minor children (R. 2-5, 59). Upon being duly summoned, petitioner railway duly filed its answer in said action, pleading solely to the merits of plaintiff's cause of action alleged in her complaint (R. 6-7, 59).

Thereafter, and following various incidental proceedings in said action in the said district court (R. 59-60), plaintiff filed an amended complaint in said action on March 8, 1940 (R. 7-9, 60), to which the railway filed a motion to make more definite and certain (R. 9-10, 60), and, following the taking up, submission and overruling of that motion (R. [illegible] 61), the railway filed its answer to said

amended complaint, pleading solely to the merits of the cause of action, by way of denial of a part of the allegations of said amended complaint, and by way of pleading affirmative defenses of contributory negligence and assumption of risk (R. 10-11, 61).

The issues having been joined without any attack on, or challenge of, the jurisdiction of the district court below by the railway (R. 16, 43), the case was set for trial on July 8, 1940 (R. 15, 43, 61).

After the case had been so set for trial, and on May 27, 1940, the railway company filed in the Chancery Court of Knox County, State of Tennessee, a bill of complaint, wherein it was named as complainant and said Ethel Painter, as administratrix aforesaid and individually in her own right, was named as defendant, and the railway secured thereon an ex parte interlocutory order of injunction whereby the said Ethel Painter, both in her said representative capacity and individually, was restrained and enjoined from in any way further maintaining or prosecuting her said action under the Federal Employers' Liability Act pending in the district court below at St. Louis, Missouri, and from instituting or prosecuting a similar action against the railway in any jurisdiction other than in the state courts for Knox County, Tennessee, or the state courts for Madison County, North Carolina, or in the United States District Court for the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville (R. 17-19, 26-35, 43-44). This bill of complaint in the Tennessee Chancery Court, and the summons and writ of injunction issued thereon, were duly served upon respondent, Ethel Painter, on the said 27th day of May, 1940 (R. 18).

The said bill of complaint of the railway, upon which the writ of injunction was issued by the Chancery Court of

Knox County, Tennessee (and which is set out in full at R. 26-33), was founded in the charges, substantially, that the trial of respondent's said action under the Federal Employers' Liability Act in the United States District Court for the Eastern Judicial District of Missouri, the trial court below, would (a) impose upon the railway greater expense, inconvenience and burden than would the trial of such action in the City of Knoxville, County of Knox, State of Tennessee, the residence of the respondent, or in the Western District of North Carolina, which included the County of Madison of that state, in which the cause of action for the injuries to and death of respondent's intestate arose; (b) burden the railway in its work of moving interstate commerce; (c) permit respondent to avoid the laws of the States of Tennessee and North Carolina; (d) permit respondent to secure advantages of the laws of the State of Missouri; and (e) thereby permit respondent to obtain improper and oppressive advantages so as to compel said railway company to submit to unjust and unreasonable demands made by her, and deprive it of its property without due process of law (R. 19-21, 44).

Thereafter, on June 7, 1940, after having given due written notice of her intention so to do (R. 12-14, 61), respondent, Ethel Painter, moved the district court below for leave to file a verified supplemental complaint in her said action under the Federal Employers' Liability Act, which said motion was heard and submitted (R. 61), and on June 19, 1940, the said district court granted plaintiff leave to file said supplemental complaint and issued a temporary restraining order thereon, until a hearing on plaintiff's motion for a preliminary injunction (R. 38-41), and such supplemental complaint and said temporary restraining order were duly received and filed in said district court on June 21, 1940 (R. 14, 38).

This verified supplemental complaint of respondent (set

out in full at R. 14-26) sought relief to preserve the jurisdiction of the said district court below of and over respondent's said action under the Federal Employers' Liability Act pending therein, and, after alleging the facts hereinbefore recited, further alleged:

(a) that respondent had and has an absolute right to maintain her said action under the Federal Employers' Liability Act in said District Court of the United States;

(b) that such action will not impose upon the railway any greater expense or burden than is imposed by law, and particularly the Federal Employers' Liability Act;

(c) that the district court below has, and since respondent's said action was filed therein had had, specific, full, complete, sole and exclusive jurisdiction of and over respondent's said action under the Federal Employers' Liability Act, and the parties thereto;

(d) that respondent in both her representative capacity and as an individual, is a necessary and material witness at the trial of her said action under the Federal Employers' Liability Act, and was and is prevented by the injunction suit and proceedings in Tennessee from testifying either at the trial or by deposition, in her said action pending in the district court below and over which said district court had jurisdiction;

(e) that said injunction suit and proceedings in Tennessee [1] amount to an unwarranted interference and intermeddling with the jurisdiction of the district court below; [2] arrest, impair, frustrate, defeat and destroy the jurisdiction of the district court below, and the due and proper administration of justice; [3] unlawfully, without due process of law, and inequitably deprives respondent of rights granted her by the laws of the United States enacted pursuant to the Constitution; [4] set aside and at naught the laws of the United States, and the Federal Employers' Liability Act; and [5] were null, void and of no force or effect;

(f) that respondent is desirous of trying her said action, under the Federal Employers' Liability Act, in the district court below, which she had the absolute right to do, and

(g) that the district court below could not properly exercise its jurisdiction in respondent's said action under the Federal Employers' Liability Act; that respondent would suffer irreparable damage and unconscionable and inequitable wrong, and that respondent would be subjected to the risk of punitive action by said Chancery Court of Tennessee if she should attempt to try her said action in the district court below, unless the relief prayed for in her supplemental complaint be granted and said proceedings in said Chancery Court of Tennessee be dismissed.

By the prayer of such supplemental complaint (R. 24-25) respondent asked for relief, in substance, enjoining petitioner Southern Railway Company from doing any matter or thing tending to interfere with the jurisdiction of the district court below over, or with the prosecution of, respondent's said action under the Federal Employers' Liability Act pending in said district court, and enjoining and directing the railway to dismiss its said bill of complaint and injunction proceeding in the said Chancery Court of Knox County, Tennessee. Copies of the railway's said bill of complaint in said Chancery Court of Tennessee, the fiat issued thereon, the summons thereon, and the writ of injunction issued thereon, were attached to respondent's supplemental complaint in the district court below, as Exhibit A to said supplemental complaint (R. 26-35).

Following a hearing duly had upon respondent's motion for a preliminary injunction on her verified supplemental complaint, and upon the railway's motion to dismiss said supplemental complaint (R. 36-37, 41, 61, 63),

the federal district court below found the facts substantially as alleged in said supplemental complaint (R. 42-45), and made conclusions of law which were in substance that:

1. The petitioner Southern Railway Company was subject to suit, and personal service of process, in the Eastern Division of the Eastern Judicial District of Missouri, in actions brought under the Federal Employers' Liability Act (R. 45).

2. The respondent had and has a federal right to institute and prosecute in said district court below her said action against the railway under that act (R. 45-46).

3. Said district court below has had, and now has, specific, complete, sole and exclusive jurisdiction of and over the subject matter of, and the parties, to respondent's said action against petitioner railway under that act (R. 46).

4. The jurisdiction of said district court having attached to said action, the right of respondent to prosecute said action in that court to a final conclusion, and the right of that court to proceed to a hearing and determination of said action, without interference or impairment by proceedings in another court, could not be entrenched upon (R. 46).

5. The district court below had the duty, right power and authority to maintain and exercise its jurisdiction of and over respondent's said action under the act, until the final object of the action is accomplished and complete justice done between the parties thereto, and, if necessary to that end, to issue its writ of injunction to: (a) preserve and protect the jurisdiction of said district court over said action; (b) prevent the parties to said action from doing any matter or thing tending to interfere with, arrest, impair, frustrate or defeat the jurisdiction of said district court below; (c) prevent and defeat any attempt by either of the parties to divert said action from the district court below to any other court or courts; and (d) prevent peti-

tioner Southern Railway Company from carrying on a suit in a state court when and in so far as such suit interfered with the effective trial and determination of the issues involved in respondent's action under the Federal Employers' Liability Act pending in said district court below (R. 46-47).

6. The injunction suit and proceedings in the Tennessee Chancery Court interfered with, arrested, impaired and tended to frustrate and defeat the jurisdiction of the district court below over respondent's said action pending therein under the Federal Employers' Liability Act; interfered with, arrested, impaired and tended to frustrate and defeat the due and proper administration of justice; attempted to divert the litigation of the action over which said district court had acquired and had full jurisdiction to another court; deprived the respondent of her absolute federal right, granted her by the laws of the United States, to institute and prosecute her said action to a final conclusion in said district court; and worked an inequitable and unconscionable wrong upon the respondent (R. 47).

7. The Chancery Court of Knox County, Tennessee, was without authority or jurisdiction to entertain or consider the injunction suit and proceedings instituted therein by petitioner Southern Railway Company; and the legislature nor the courts of any state have any right, power, authority or jurisdiction to interfere with or restrict the operation of a law or laws of the United States, or any rights granted thereunder (R. 48).

8. The injunction issued by the Chancery Court of Tennessee was null, void and of no force and effect (R. 48).

9. Respondent had no adequate remedy at law for relief from the injunction suit or proceedings in the Chancery Court of Tennessee, or from the injunction issued thereon, and, unless such injunction suit or proceeding, and the injunction issued thereon, be dismissed, the district court

below could not properly perform its duty or properly exercise its jurisdiction, prescribed by the laws of the United States, and respondent would be inequitably and unconscionably wronged and suffer irreparable damage (R. 48).

10. The respondent's supplemental complaint, filed in and ancillary to her said action under the Federal Employers' Liability Act, was a proper and adequate method of securing injunctive relief from the conduct of the petitioner railway in instituting and prosecuting said injunction suit proceeding in the Chancery Court of Tennessee, and a proper and adequate method of initiating the necessary action by the district court below to preserve and protect its jurisdiction from interference, arrest, impairment, frustration or defeat (R. 48-49).

11. Section 265 of the Judicial Code has no application to the relief sought by respondent's supplemental complaint filed in the district court below, and said supplemental complaint and the relief sought thereby came within the plenary and inherent powers of the district court below, and Section 262 of the Judicial Code (R. 49).

12. The respondent's motion for a preliminary injunction be sustained, and a preliminary injunction granted respondent against petitioner railway, as prayed in respondent's supplemental complaint (R. 49).

A preliminary injunction was thereupon issued by the district court below (R. 73-76) restraining petitioner railway from interfering with the respondent in carrying on her said action in the district court below, restraining petitioner railway from doing any matter or thing tending to interfere with the jurisdiction of the district court below of and over respondent's said action pending therein against the railway under the Federal Employers' Liability Act, restraining petitioner railway from taking any except dismissal proceedings in the injunction suit and proceeding pending in the Chancery Court of Knox County,

Tennessee, and directing petitioner railway forthwith to dismiss and set at naught said injunction proceeding in the Chancery Court of Tennessee. The writ of injunction was duly served upon petitioner railway (R. 54).

From the order of the district court below, and the writ of preliminary injunction issued pursuant thereto, petitioner railway duly took its appeal to the Circuit Court of Appeals for the Eighth Circuit, which affirmed the order and judgment of the district court below (R. 94-95), and rendered an opinion (R. 78-94; reported in 117 F. 2d 100-108), giving as a basis for its decision and judgment substantially the same conclusions of law as were arrived at by the federal district court below.

Any other of the incidental facts necessary to the consideration of the propositions involved here will be adverted in our argument herein.

STATUTES INVOLVED.

The statutes involved in this case are:

First: The Federal Employers' Liability Act of 1908 (April 22, 1908, c. 149, 35 Stat. 65 et seq.), as amended by the supplemental Act of 1910 (April 5, 1910, c. 143, 36 Stat. 291), and particularly sections 1, 6 and 9 thereof (45 U. S. C. A., §§51, 56 and 59).*

Second: Section 262 of the Judicial Code, 28 U. S. C. A., §377.

Third: Section 265 of the Judicial Code, 28 U. S. C. A., §379.

The material portions of these statutes are hereinafter set out in an appendix to this brief.

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*In petitioner's brief it is said that the Federal Employer's Liability Act, as amended by the Act of August 11, 1939, c. 685, 53 Stat. 1404, et seq., is applicable, but, since the cause of action here involved arose on February 3, 1939, the petitioner's contention is obviously incorrect.

SUMMARY OF THE ARGUMENT.

I.

The district court below had specific, full and complete jurisdiction over both the subject matter of, and the parties to, respondent's action therein against petitioner railway company under the Federal Employers' Liability Act, to recover damages for the injury to and death of respondent's decedent, Geoffrey Painter.

II.

The Chancery Court of Knox County, Tennessee, was wholly without authority or jurisdiction over the subject matter of the proceeding instituted therein by the petitioner railway company, and the injunction issued in that proceeding was unauthorized and void, because:

(a) The district court below having by law jurisdiction over the respondent's action against petitioner railway for damages, and that jurisdiction having attached, the right of petitioner to prosecute her action to a final conclusion in that court, and the right and duty of that court to proceed to exercise its jurisdiction to that end, without interference by proceedings in another court, were exclusive and could not be entrenched upon.

(b) The right of the respondent to resort to the prescribed federal courts for the litigation of her action against the petitioner railway, and the jurisdiction of those courts over plaintiff's action, could not be affected, diminished or enlarged upon by state action.

(c) A state court simply has no power or authority to enjoin the process of, or proceedings in, a federal court, and cannot enjoin parties to an action in a federal court from further prosecuting that action.

(d) The foregoing principles are particularly applicable

where the action in the federal court is one under a federal Act. The Federal Employers' Liability Act is the supreme, paramount and exclusive law of the land respecting all rights and liabilities, and the jurisdiction and venue of actions, concerning an employer's liability for injury to and death of employees in interstate transportation by rail.

(e) The exercise of the respondent's right to bring and maintain her action for damages against petitioner railway in the district court below, and the exercise of that court's right and duty to take and exercise its jurisdiction over respondent's action, having been specifically provided for by section 6 of the Federal Employers' Liability Act, were not conditioned upon any questions of convenience, expense, or burdensomeness, because the Congress, having the right to regulate and control the subject matter of the act, could place the burdens incidental to such regulation and control as it saw fit.

(f) The Federal Employers' Liability Act, which created the respondent's right to bring and maintain the action for damages in the district court below, and which created the right and duty of the district court below to take and exercise jurisdiction over said action, being the supreme and exclusive law governing those rights and duties, was as much the law of Tennessee, and those rights and duties were as much prescribed by the law of Tennessee, as if expressly provided by specific statutes of that state. The exercise of those rights and duties was not, and could not be, in conflict with the law or public policy of the State of Tennessee.

(g) This respondent brought her action in the federal district court below not by virtue of her appointment as administratrix under the law of Tennessee, but by virtue of her designation by the federal statute as trustee for the beneficiaries named in the federal act.

III.

The injunction issued by the Tennessee Chancery Court, being void by reason of having been issued by a court which had no jurisdiction of the subject matter, is not entitled to be given "full faith and credit" under the constitutional provisions, and is not binding upon either this court or the courts below.

IV.

The district court below had both reason and occasion, and power and authority, to issue the injunction which it issued against petitioner railway company, because:

(a) The injunction proceeding brought by petitioner railway company in, and the injunction issued by, the Chancery Court of Knox County, Tennessee, although directed against plaintiff alone, interfered with, impaired, and tended to frustrate and defeat, both the respondent's right to prosecute her action to a final conclusion in the district court below, and the jurisdiction of that court.

(b) The federal courts have the inherent power and authority to protect and preserve their jurisdiction over an action pending before them, by enjoining any proceeding which tends to interfere with, impair, frustrate or defeat that jurisdiction.

(c) In view of the provisions of section 262 of the Judicial Code (28 USCA, § 377), section 265 of the Judicial Code (28 USCA, § 379) has no application to such an injunction, even though such injunction may have the effect of staying proceedings in a state court.

V.

No state or federal court, other than the federal district court below in Missouri, is open or available to respondent for the prosecution of her cause of action against petitioner railway for the injury to and death of her decedent.

ARGUMENT.

At the outset of the argument in its brief here, petitioner railway has undertaken to set out a large number of asserted conflicts of law and fact which it deems must be "reconciled" before there can be had a correct decision of this case. We believe it would serve no useful purpose, and that there is no necessity for this Court, to labor with those alleged conflicts to point out their fallacies. This case involves no more than a conflict of jurisdiction between a state court and a federal court due to the inherent dual sovereignty existent in the form of the government of the United States, and can be determined by the consideration and application of a few well-settled principles, and the well-settled exceptions to those principles.

I.

The federal district court below, in Missouri, had specific, full and complete jurisdiction over both the subject matter of, and the parties to, this respondent's action against petitioner railway company under the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, 35 Stat. 65 et seq., as amended by Act of Apr. 5, 1910, c. 143, 36 Stat. 291 et seq.; 45 USCA, §§ 51-59) to recover damages for the injury to and death of respondent's decedent.

There is, and can be, no room for any dispute about the matter just above stated in bold-face type.

The cause of action created by the Federal Employers' Liability Act is a transitory one *in personam*, and the jurisdiction of courts over, and the venue of, actions under the act were specifically provided for by the amendment of 1910 to section 6 of the Act (Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 219, 45 USCA, § 56), which originated as H. R. 17263 of the 61st Congress, 2d Session, and which,

in so far as is material to the matter now under discussion, provides:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or *in which the defendant shall be doing business at the time of commencing such action.* The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any state court of competent jurisdiction shall be removed to any court of the United States." (Emphasis supplied.)

Under the plain language of this provision of the Act the plaintiff in an action under the Act is given an unqualified right to select both the jurisdiction and the venue in which to bring his action, and it has been aptly said that this provision is "one for the benefit of the plaintiff" which permits him to institute his action in whichever of the * * * designated places best suits his convenience" (Roberts' Federal Liability of Carriers, 2d Ed., Vol. 2, p. 1842, § 959). The legislative history of this provision fully confirms its plain language. In the course of the debate in the House of Representatives upon this amendment to the Act, Mr. Sterling, who had charge of the bill in the House, said (Congressional Record, Vol. 45, Part 3, p. 2253):

> "Mr. Speaker, this proposed amendment makes three changes in the employers' liability law. As the law is now suit can be brought only in the district where the defendant is an inhabitant. It has been so held by one of the federal courts in Texas. *This amendment proposes to allow the plaintiff to begin suit* in the district where the plaintiff lives, or in the district where the defendant lives, or in the district where the injury occurred, or *in the district where the defendant may be found at the time action is commenced.*" (Emphasis supplied.)

and, further (ibid, p. 2255):

> "It makes it much more convenient for the plaintiff to bring his suit by providing that he may bring suit in his own district or the defendant's district or where the injury occurred or *where the defendant may be found*. As the law is now, a suit can only be brought in the district where the defendant is domiciled." (Emphasis supplied.)

and, still further (ibid, p. 2257):

> "I think that the amendment in this bill simply provides the same rule in reference to the place of bringing suit that is provided in practically all of the States of the Union. Now, they can always, in the state courts, bring suit, as a rule, wherever the defendant can be found, and *this simply gives the plaintiff the right to bring suit in a federal court where the defendant can be found.* * * * The plaintiff can bring suit in the state or federal court, as he sees fit." (Emphasis supplied.)

During the debates in the Senate upon this amendment, Mr. Borah, who had charge of the bill in that house of the Congress, said (Congressional Record, Vol. 45, Part 4, p. 4034):

> "So, if this bill should be passed the law will be remedied in that respect, in *enabling the plaintiff to bring his action* where the cause of action arose, or *where the defendant may be doing business. The bill enables the plaintiff to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action, if he chooses to do so.*"

The report of the Senate Judiciary Committee upon this amendment (Report No. 432, appearing in full in the Congressional Record, Vol. 45, Part 4, pp. 4040-4041) says, in part (ibid, p. 4041):

> "This amendment is necessary in order * * * to make it unnecessary for an injured plaintiff to pro-

> ceed only in the jurisdiction in which the defendant corporation is an 'inhabitant.' This is held by the courts to be the jurisdiction in which the charter of the corporation was issued. * * *. It seems clear from these decisions that a suit in a Federal court under this law, where jurisdiction is founded on the fact that the case involves a Federal statute, must be brought in the district of which the defendant is an inhabitant.
>
> "No argument is necessary to convince that this is a grave injustice to the plaintiff.
>
> "Such an embarrassing situation ought not to be permitted to exist where any plaintiff is proceeding in a Federal court on a right based on a law of the United States."

That the Congress had in mind that the amendment might cast upon a railroad some considerable inconvenience, expense and burden in defending an action at some distance from its residence or from the place where the cause of action arose, is shown by the comment of Mr. Burke, of Pennsylvania, who, during the course of the debate in the House upon the amendment, said (Congressional Record, Vol. 45, Part 3, p. 2257):

> "That throws light upon the very business that the gentleman is familiar with, of bringing actions, and would impose as much hardship by bringing actions in remote places under such a change in the law, and thus compel the defendant to take his witnesses a very great distance at a very great disadvantage."

In direct and simple language the Congress by this provision of the Act gave the plaintiff in an action under the Federal Employers' Liability Act the right to institute and maintain an action in the federal court of any district in which the defendant was doing business at the time the action was commenced. The courts, including this Honorable Court, have "nothing to do but to ascertain and declare the meaning of the few simple words" of this pro-

vision of the Act, which "explanation cannot clarify" and "ought not to be employed to confuse," and if the clear construction of these words is such as to impose hardship upon railroads, "such hardship is no concern of the courts," who have "no responsibility for the justice or wisdom of legislation," but whose duty it is "to enforce the law as it is written" (St. Louis, I. M. & S. R. Co. v. Taylor, 210 U. S. 281, 294-295, 28 S. Ct. 616, 52 L. Ed. 1051). For the courts to create ambiguity and implied qualifications in the clear and unequivocal language of this provision of the Act, so as to make plaintiff's right of selection of the forum in which to bring his action dependent upon matters of inconvenience, expense, or burdensomeness to the defendant, would be to amend that provision of the Act by judicial construction, rather than to interpret it.

In conformity with both the express and explicit language of this provision of the Act, as well as the legislative intent in its enactment, this Court has clearly and unequivocally ruled that the right of selection of the forum given plaintiff by this provision is an absolute federal right (Second Employers' Liability Cases [Mondou v. New York, N. H. & H. R. Co.], 223 U. S. 1, 58, 32 S. Ct. 169, 56 L. Ed. 327; Hoffman v. State of Missouri ex rel. Foraker, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905; McKnett v. St. Louis-S. F. R. Co., 292 U. S. 230, 233-234, 54 S. Ct. 690, 78 L. Ed. 1227; see, also, State of Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor, 255 U. S. 200, 208, 45 S. Ct. 47, 69 L. Ed. 247).

Under this provision of the Act, the fact that petitioner railway company in this case was doing business in the City of St. Louis, State of Missouri, in the Eastern Judicial District of Missouri (R. 16, 26, 42), clearly establishes the right of this respondent to bring and maintain her action in the district court below for that district, and clearly

demonstrates that the district court below had specific, full and complete jurisdiction over both the subject matter of, and the parties to, respondent's action in that court against petitioner railway company under the Act. The petitioner railway here tacitly concedes these matters, for it does not here controvert them in the least; at page 50 of its brief in the Circuit Court of Appeals below, the petitioner railway frankly conceded that both the jurisdiction and the venue of respondent's action against it in the federal district court in Missouri were correct and proper; and in the federal district court below in Missouri, petitioner railway company did not question the venue or the jurisdiction (R. 6-7, 10-11, 59, 61, 79, 80), but, on the contrary, actually invoked the jurisdiction of the district court in respondent's action there by filing and presenting a motion to make the amended complaint more definite and certain (R. 9-10, 60-61).

II.

The Chancery Court of Knox County, Tennessee, was wholly without jurisdiction of the subject matter of the complaint filed therein by the petitioner railway here, and the injunction issued by that court upon that complaint was wholly unauthorized and void.

Notwithstanding that the federal district court below in Missouri had specific, full and complete jurisdiction over both the subject matter of, and the parties to, this respondent's action therein against petitioner railway under the Federal Employers' Liability Act, the petitioner railway company thereafter filed in the Chancery Court of Knox County, State of Tennessee, a bill of complaint (R. 17-18, 26-33, 43-44), the sole and only purpose of which was to secure an injunction to restrain this respondent from the further prosecution of her said action in the federal district court below, and to divert the litigation of

that action to another court or courts, and that state Chancery Court issued an ex parte preliminary injunction (R. 18, 33, 34-35, 43-44), as prayed by petitioner railway, restraining and enjoining this respondent from further maintaining or prosecuting her said action in the federal district court below, and from instituting or prosecuting a similar action in any jurisdiction other than those specified in the injunction, which included only the state and federal courts where this respondent resided and where the cause of action arose.*

The grounds alleged in the complaint filed in the Tennessee Chancery Court as a basis for the injunction by that court are, to say the least, inaptly stated and varied (R. 19-21, 26-36, 44; see, also, ante, pp. 4, 5). Many of them are, patently, without foundation in fact or law—e. g., that the maintenance of respondent's action founded in the federal statute in the federal district court below would permit her to avoid the laws of Tennessee and North Carolina, and secure the advantages of the law of Missouri. The Tennessee court did not indicate upon which of these varied grounds it issued its injunction, but the petitioner railway here asserts (Petitioner's brief, p. 5) that the injunction was issued "on general grounds of equity" in that the maintenance and trial of respondent's action in the federal district court below in Missouri, when plaintiff and witnesses resided in western North Carolina or eastern Tennessee, "would be inequitable, harassing and oppressive, and would work an unjust and inequitable hardship upon petitioner railway," and would unduly burden interstate commerce.

*Under the injunction issued by the Tennessee Chancery Court, respondent was restricted to her place of residence at the City of Knoxville in the bringing of an action in the state or federal courts in Tennessee, and could not have even brought an action at Chattanooga, Tennessee, which was but 111 miles from the place of her residence, and in which the petitioner railway was doing business. Mention is made of this fact to show the highly restrictive and confining nature of the state court's injunction.

Although this Court cannot undertake to ascertain the number and probable importance of the probable witnesses or other matters of relative convenience regarding a trial of this respondent's action against petitioner railway (Denver & R. G. W. R. Co. et al. v. Terte, 284 U. S. 284, 287-288, 52 S. Ct. 152, 76 L. Ed. 295), we believe that this Court can, and will, take judicial notice of the fact that the maintenance and trial of this respondent's action in the federal district court below at St. Louis, Missouri, places no substantially increased burden upon petitioner railway. The trial of the case, whether it be had in St. Louis, in Knoxville, Tennessee, or in western North Carolina, would consume exactly the same time and require the same witnesses. The transportation of those witnesses to and from St. Louis requires only such time as would be the equivalent of an overnight journey each way, so they will not be required to lose any more working days than if the case were tried in Tennessee or North Carolina, and the transportation of such witnesses to and from St. Louis can be had upon free passes so as to require no additional expense of the railway. Furthermore, the petitioner railway company's own time-tables show that the distance from Knoxville, Tennessee, to petitioner railway's residence at Richmond, Virginia (R. 16, 26, 42), where suit against petitioner railway could also have been brought under section 6 of the Federal Employers' Liability Act, is 507.8 miles, while the distance from Knoxville ~~to~~ St. Louis is 559.3 miles—a distance of but about fifty miles farther. Manifestly, the real fact of the matter is that, as this Court so aptly said in St. Louis, I. M. & S. R. Co. v. Taylor, 210 U. S. 281, 295, 28 S. Ct. 616, 52 L. Ed. 1061:

> "* * * when applied to the case at bar the argument of hardship is plausible only when the attention is directed to the material interests of the employer to the exclusion of the interests of the employee. * * *"

The petitioner railway, however, boldly asserts that the

Chancery Court of Knox County, Tennessee, had full and complete jurisdiction of the subject matter of the proceeding before it—i. e., injunction to restrain a resident of Tennessee from further maintaining and prosecuting an action theretofore instituted by such resident of Tennessee against a resident of Virginia in a federal district court in Missouri, upon the ground that the maintenance and prosecution of that action placed an undue inconvenience, expense and burden upon the defendant, and thereby was inequitably vexatious and harassing—so that the injunction issued by the Tennessee court was within its power and authority, and valid and binding. This respondent respectfully submits that the contrary, and upon well-established principles [illegible] independent of the Federal Employers' Liability Act but which are further strengthened and confirmed by the applicability of that Act, the Tennessee court was wholly without authority or jurisdiction of the subject matter of the proceeding instituted therein by petitioner railway, and that its injunction was unauthorized, void, and of no force and effect in law.

(A) It has long been settled by this Court that, where the state and federal courts have concurrent jurisdiction over a cause of action, the grant of concurrent jurisdiction implies that the plaintiff shall have the absolute right to elect the forum in which he will bring his action (Willcox v. Consolidated Gas Co., 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed. 382; State of Missouri ex rel. St. Louis, B. & M. R. Co., 266 U. S. 200, 208, 45 S. Ct. 47, 69 L. Ed. 247; 21 Corpus Juris Secundum, p. 807, § 527). In Willcox v. Consolidated Gas Co., supra, this Court tersely said (212 U. S., l. c. 40):

> "The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied."

It has, also, been long and well settled that, when a federal court is properly appealed to in a case over which it

has by law jurisdiction, it is not only the right, but the duty, of that court to take and exercise jurisdiction (Cohens v. Virginia, 6 Wheat. [19 U. S.] 264, 404, 5 L. Ed. 257; Hyde v. Stone, 20 How. [61 U. S.] 170, 175, 15 L. Ed. 874; Payne v. Hook, 7 Wall. [74 U. S.] 425, 430, 19 L. Ed. 260; Chicago & N. W. R. Co. v. Whitton, 13 Wall. 270, 286, 20 L. Ed. 571; Chicot County v. Sherwood, 148 U. S. 529, 534, 13 S. Ct. 695, 37 L. Ed. 546; Willcox v. Consolidated Gas Co., 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed. 382; McClelland v. Carland, 217 U. S. 268, 281-282, 32 S. Ct. 269, 54 L. Ed. 762; Kline v. Burke Const. Co., 260 U. S. 226, 234, 43 S. Ct. 79, 67 L. Ed. 226; Smith v. Apple, 264 U. S. 274, 280, 44 S. Ct. 311, 68 L. Ed. 678; 25 Corpus Juris, p. 693, § 9). The substance of these rulings is tersely stated in Hyde v. Stone, supra, wherein it was said (20 How. [61 U. S.], l. c. 175):

> "* * * the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction."

The petitioner railway asserts that the foregoing rule, that where a federal court has by law jurisdiction it must take and exercise that jurisdiction when properly appealed for that purpose, has its exceptions, lying within the doctrine of forum non conveniens, and cites in support of its assertion Canada Malting Co. v. Paterson Steamships Ltd., 285 U. S. 413, 52 S. Ct. 413, 76 L. Ed. 837, which was an admiralty proceeding wholly between foreigners; Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, 55 S. Ct. 386, 79 L. Ed. 850, which petitioner describes as involving "an actual race between the federal district court in Pennsylvania and the court of that state and possession of the property and business of a Pennsylvania insurance company" (Petitioner's Brief, p. 36), and, dependent upon

the outcome of that "race," also involved the question of whether the company would be liquidated in the federal court under general principles of equity or in the state court by a state officer and under the state law regarding liquidation of insurance companies of that state; Pennsylvania v. Williams, 294 U. S. 176, 55 S. Ct. 380, 79 L. Ed. 841, which involved substantially the same situation as did Penn General Casualty Co. v. Pennsylvania, supra, although it involved a Pennsylvania building and loan company rather than an insurance company; and Harkin v. Brundage, 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457, which involved a situation aptly described by petitioner railway as "a fraud upon both (the state and the federal) courts" (Petitioner's Brief, p. 37). While we recognize that there are rare exceptions to the rule, certainly this respondent's action against petitioner railway under the Federal Employers' Liability Act does not come within the category of any of the cases relied upon by petitioner so as to be brought within an exception to the rule; her action was not one in admiralty, and was not one between "foreigners," but was, on the contrary, an action in a court of the United States, under a statute of the United States, and between citizens of the United States; her action did not involve any "race between a state and a federal court," because it was filed in the federal court on August 31, 1939 (R. 2, 4-5), some nine months before the railway filed its proceeding in the Tennessee state court (R. 17, 35, 43), and did not involve any question of whether federal law or state law should govern, because it was founded entirely in a federal statute; and, of a certainty, this respondent's action in the federal district court below did not involve any fraud upon any court.

Furthermore, the doctrine of forum non conveniens cannot be applied to this respondent's action under the federal act against petitioner railway in the federal district

court below, so as to authorize the Tennessee state court to interfere with the maintenance and prosecution of it, for at least three reasons. In the first place, the doctrine of forum non conveniens is one which is applicable only by a court to a case pending before it, as the decisions relied upon by petitioner railway well illustrate, and is not one which may be applied by one court to a case pending before a court in another jurisdiction—and petitioner railway made no attempt to have the federal district court below apply that doctrine to this respondent's case (R. 6-7, 10-11, 59, 61, 79, 80), but, on the contrary, sought a "back-handed" application of the doctrine by the state court of Tennessee. In the second place, the doctrine of forum non conveniens is not to be applied merely upon considerations of convenience or expense, but is to be applied only where the trial of the cause in the forum in which it is pending will produce an injustice, and we do not believe that petitioner railway company will have the temerity to contend that it cannot secure justice in and from the federal district court below. In the third place, the doctrine of forum non conveniens is never to be applied where it will result in an injustice to the plaintiff (Norton v. Norton [1908], 1 Ch. 471, 485; Egbert v. Short [1907], 2 Ch. 205, 212), and there seems ample reason to assume that there is some good reason from the standpoint of petitioner railway, which will result in a profit to it and in a corresponding loss to this petitioner and the dependents of her decedent, for its strenuous effort to prevent the trial of respondent's action under the act in the district court in Missouri, and, instead, to have the trial of that action held in the limited areas of Tennessee or North Carolina prescribed by the Tennessee state court's injunction.

Let us, however, now return, from our digression to discuss the contentions urged by petitioner railway, and, simply,

point out that there is presented by the case at bar no reason for a departure from the well-settled principle that when a federal court is properly appealed to in a case over which it has by law jurisdiction, it is both the right and the duty of that court to take and exercise that jurisdiction and proceed to judgment.

Under the foregoing principles, when this respondent appealed to the federal district court below to take and exercise the jurisdiction which that court indisputably had over her action for the injury to and death of her decedent, it was the duty of that court to take and exercise that jurisdiction. Furthermore, when the jurisdiction of the district court below had attached to respondent's cause of action, neither her right to prosecute her action to a final conclusion in that court, nor the right and duty of that court to exercise its jurisdiction to that end, could be interfered with, impaired, frustrated or defeated by any proceedings in any other court (Wallace v. McConnell, 13 Pet. [38 U. S.] 138, 151, 10 L. Ed. 95; Peck v. Jenness, 7 How. [48 U. S.] 612, 624, 12 L. Ed. 841; Orton v. Smith, 18 How. [59 U. S.] 263, 266, 15 L. Ed. 393; Taylor v. Tainter, 16 Wall. [83 U. S.] 336, 370, 21 L. Ed. 287; French v. Hay, 22 Wall. [89 U. S.] 250, 253, 22 L. Ed. 857; In re Chetwood, 165 U. S. 443, 460, 17 S. Ct. 385, 41 L. Ed. 782; Proutt v. Starr, 188 U. S. 537, 544-545, 23 S. Ct. 398, 47 L. Ed. 584; Riehle v. Margolies, 279 U. S. 218, 223, 49 S. Ct. 310, 73 L. Ed. 669; Sharon v. Terry, 36 F. 337, 355; Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 333). This doctrine does not, as petitioner railway here contends, have its foundation in mere "comity"; it has its foundation in necessity, as is manifest from pronouncements of this Court, which we will now quote.

In Freeman v. Howe, 24 How. [65 U. S.] 450, 459, 16 L. Ed. 749, it was said:

"We need scarcely remark, that no Government could maintain the administration or execution of its laws, civil or criminal, if the jurisdiction of its judicial tribunals were subject to the determination of another. But we shall not pursue this branch of the case further."

In Wallace v. McConnell, 13 Pet. [38 U. S.] 138, 151, 10 L. Ed. 95, it was said:

"The jurisdiction of the District Court of the United States, and the right of the plaintiff to prosecute his suit in that Court, having attached, that right could not be arrested or taken away by any proceedings in another Court. This would produce a collision in the jurisdiction of Courts that would extremely embarrass the administration of justice."

In Peck v. Jenness, 7 How. [48 U. S.] 612, 624-625, 12 L. Ed. 841, it was said:

"* * * *where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but in necessity.* * * *." (Emphasis supplied.)

And the matter was clearly summed up in Sharon v. Terry, 36 F. 337, 355, wherein it was said:

"The jurisdiction of the Federal Court having attached, the right of the plaintiff to prosecute his suit to a final determination there cannot be arrested, defeated or impaired by any proceeding in a court of another jurisdiction. This doctrine we hold to be uncontrovertible. It is essential to an orderly and decent administration of justice and to prevent an unseemly conflict of authority which could ultimately be determined only by superiority of physical force on one side or the other."

(B) Coexistent with the principles just above discussed is the incontrovertible doctrine that "a state cannot confer jurisdiction on a federal court, nor can it take it away" (Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 330). Literally, volumes could be written in discussing the multitude of authorities which demonstrate the existence of, and the reasons underlying the necessity for, this doctrine. Certainly, no extended discussion of those matters is necessary here, and we shall limit ourselves to brief quotation from a few of the authorities.

In David Lupton's Sons v. Automobile Club of America, 225 U. S. 489, 500, 32 S. Ct. 711, 56 L. Ed. 1177, it was said:

> "* * * The State could not prescribe the qualifications of suitors in the courts of the United States, and could not deprive of their privileges those who were entitled under the Constitution and laws of the United States to resort to the Federal courts * * *."

In Herron v. Southern Pacific Co., 283 U. S. 91, 94, 51 S. Ct. 383, 75 L. Ed. 857, this Court said:

> "The controlling principle * * * is that state laws cannot alter the essential character or function of a Federal court. * * * A Federal court is not subject to state regulations."

In Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, 197, 55 S. Ct. 386, 79 L. Ed. 850, this Court said:

> "The jurisdiction conferred on the District Courts by the Constitution and laws of the United States cannot be affected by state legislation."

In Woods Bros. Const. Co. v. Yankton County, 8 Cir., 54 F. 2d 304, 308, it was aptly said:

> "* * * the jurisdiction of the federal court is prescribed by the Constitution and acts of Congress and cannot be restricted or enlarged by the statutes of a state or decisions of a state court."

Other authorities in this connection are Barrow Steamship Co. v. Kane, 170 U. S. 100, 111, 18 S. Ct. 526, 42 L. Ed. 964; Terral v. Burke Construction Co., 257 U. S. 532, 42 S. Ct. 188, 66 L. Ed. 352; Sutherland v. United States, 8 Cir., 74 F. 2d 89, 91; and 25 Corpus Juris, pp. 691-692, § 6. Those authorities are further demonstrative of the fact that neither the jurisdiction of a federal court, nor the right of a party litigant to resort to the federal courts as the forum for the trial of his case, where that right exists, can be interfered with, modified, impaired, frustrated or defeated by any state action, whether executive, legislative or judicial.

(C) It follows as a necessary conclusion from the principles which we have heretofore been discussing, that the courts of a state simply have no authority or jurisdiction to restrain or enjoin proceedings in the federal courts, and any state court injunction issued for that purpose is wholly unauthorized and void (Duncan v. Darst, 1 How. [42 U. S.] 301, 306, 11 L. Ed. 139; Riggs v. Johnson County, 6 Wall. [73 U. S.] 166, 195-196, 18 L. Ed. 768; U. S. ex rel. Moses v. Keokuk, 6 Wall. [73 U. S.] 514, 570, 18 L. Ed. 933; U. S. ex rel. Thomas v. Keokuk, 6 Wall. [73 U. S.] 518, 520, 18 L. Ed. 918; The Supervisors of Washington County v. Durant, 9 Wall. [76 U. S.] 415, 418, 19 L. Ed. 732; Amy v. The Supervisors, 11 Wall. [78 U. S.] 136, 137-138, 20 L. Ed. 101; Moran v. Sturges, 154 U. S. 256, 267, 14 S. Ct. 1019, 38 L. Ed. 981; Central National Bank v. Stevens, 169 U. S. 432, 460-461, 18 S. Ct. 403, 42 L. Ed. 807; Story's Commentaries on the Constitution of the United States, 5th Ed., Vol. 2, §§1757-1758, pp. 537-539; Story's Equity Jurisprudence, 14th Ed., Vol. 2, §1225, pp. 580-582). We see no need to quote from all those decisions and authorities. The rule announced by them is tersely stated in 14 R. C. L., p. 419, §122, in the following language:

> "It is a general rule that *a state court has no power to enjoin parties to an action in a federal court from further prosecuting that action* where it appears that the federal court first acquired jurisdiction of the cause" (emphasis supplied),

and this Court made a statement, from which it has never departed, and which has repeatedly been quoted, when, in Riggs v. Johnson County, 6 Wall. [73 U. S.] 166, 195-196, 18 L. Ed. 768, it said:

> "State courts are exempt from all interference by the Federal tribunals, *but they are destitute of all power to restrain either the process or proceedings in the national courts.* Circuit courts and State Courts act separately and independently of each other, and in their respective spheres of action, the process issued by the one is as far beyond the reach of the other, as if the line of division between them was 'traced by landmarks and monuments visible to the eye' * * *.
>
> "Viewed in any light, therefore, it is obvious that *the injunction of a State Court is inoperative to control or in any manner to affect the process or proceedings of a Circuit Court*, not on account of any paramount jurisdiction in the latter courts, but because, in their sphere of action, Circuit Courts are wholly independent of the State tribunals. * * * Undoubtedly (Federal) Circuit courts and State courts, in certain controversies between citizens of different States, are courts of concurrent and coordinate jurisdiction, and the general rule is that, as between courts of concurrent jurisdiction, the court that first obtains possession of the controversy, or of the property in dispute, must be allowed to dispose of it without interference or interruption from the coordinate court." (Parenthetical portion and emphasis supplied.)

Although there is considerable conflict in the authorities —which conflict we need not here consider at length—we

fully recognize that some authorities, including the decision of this Court in Cole v. Cunningham, 133 U. S. 107, 10 S. Ct. 269, 33 L. Ed. 538, have announced the doctrine, strongly relied upon by the petitioner railway here, that a court of equity, in a proper case and to prevent harassing, vexatious and inequitable circumstances, may restrain and enjoin parties within its jurisdiction from instituting or prosecuting proceedings in the courts of other jurisdictions. That doctrine, however, has no application to the case at bar for various reasons.

In the first place, there exists to that doctrine the exception, based upon necessity and just previously discussed, that the various state courts of this country cannot enjoin parties from proceeding in the federal courts of this country. The existence of this exception was clearly recognized by this Court in Moran v. Sturges, 154 U. S. 256, 14 S. Ct. 1019, 38 L. Ed. 981, where, after saying:

> "The general rule is that state courts cannot enjoin proceedings in the courts of the United States * * *" (154 U. S., l. c. 267),

this Court went on to say (154 U. S., l. c. 268):

> "Mr. Justice Story was of the opinion that to the doctrine which permits the courts of one State in proper cases to enjoin persons within their jurisdiction from instituting legal proceedings in other States, or from further proceeding in actions already begun, there exists the exception that the state courts cannot enjoin parties from proceeding in the courts of the United States, nor the latter enjoin them from proceeding in the former courts, an exception based upon peculiar grounds of municipal and constitutional law. Story Eq., §900; Story Const., §1757."

And, in Central National Bank v. Stevens, 169 U. S. 432, 18 S. Ct. 403, 42 L. Ed. 403, this Court, at pages 459 and 460 of 169 U. S., discussed at some length the well-estab-

lished proposition that a state court injunction is inoperative to control or in any manner affect proceedings in a federal court, and then went on to recognize that this was a necessary exception to the doctrine relied upon by petitioner railway here, saying (169 U. S., l. c. 460-461):

> "The exemption of the authority of the courts of the United States from interference by legislative or judicial action of the States is essential to their independence and efficiency. Freeman v. Howe, 24 How. 450; Buck v. Colbath, 3 Wall. 334; Rio Grande Railroad v. Gomila, 132 U. S. 478.
>
> "In Story's Equity Jurisprudence, Vol. 2, §900, it is said, referring to the power sometimes exercised by courts of equity to restrain parties within their jurisdiction from proceeding in foreign courts: 'There is one exception to this doctrine which has been long recognized in America, and that is, that state courts cannot enjoin proceedings in the courts of the United States; nor the latter in the former courts.'"

It is interesting to note that the subject matter of Story's Equity Jurisprudence, referred to in the two quotations last made, is carried forward in the latest edition of that work (Cf. Story's Equity Jurisprudence, 14th Ed., Vol. 2, § 1225, pp. 580-582), and it is there noted that the trend of judicial decision is to repudiate, even as between the courts of the different states, the doctrine sometimes applied in some of the states that a state court has the power to enjoin and restrain a citizen of that state from maintaining an action in the courts of another state—probably because of more recent and better recognition of the existence of the rule that, where the jurisdiction of a court has attached, the right of the plaintiff to prosecute his action to a final conclusion therein, without interference by proceedings in any other court, cannot be entrenched upon.

The existence of this exception to the doctrine relied upon by petitioner railway makes it unnecessary for us to

discuss at length any of the authorities relied upon by petitioner, with the exception of the decision in Bryant v. Atlantic Coast Line R. Co., 2 Cir., 92 F. 2d 569, which we shall hereinafter discuss at some length, because all of the other authorities relied upon by petitioner in connection with that doctrine deal with the right and power of one state to control by injunction actions brought by a citizen of that state in the courts of another state, rather than in the federal courts. It is, however, of significance to note that the decisions in Louisville & N. R. Co. v. Ragan, 172 Tenn. 593, 113 S. W. 2d 743, and In re Spoo's Estate, 191 Iowa 1134, 183 N. W. 580, so strongly relied upon by petitioner railway, are later in effect overruled by Illinois Central R. Co. v. Miles (Tenn.), 130 S. W. 2d 111, and Payne v. Knapp, 197 Iowa 737, 198 N. W. 62, respectively.

The second reason for the nonapplicability to the case at bar of the doctrine relied upon by petitioner railway here is that that doctrine, as was clearly recognized by the decision of this Court in Cole v. Cunningham, supra, 133 U. S., l. c. 118-119, originated, and is intended to be applied only, in cases where both parties to the proceedings in the foreign court were residents within the jurisdiction of the court of equity wherein relief was sought from the prosecution of the proceeding in the foreign court. That is not the situation presented in the case at bar, because the petitioner railway here was, and is, a resident of the State of Virginia (R. 16, 26, 42), and not a resident of the State of Tennessee.

(D) What we have heretofore said under this point of this brief, with respect to the complete lack of power or authority in the Chancery Court of Tennessee to restrain or enjoin this respondent from further maintaining and prosecuting her action against petitioner railway in the federal district court below in Missouri, has been based

entirely upon well-established general principles aside from any consideration of the effect of any specific provisions of the Federal Employers' Liability Act. When the provisions of that Act are also considered, there is left no doubt whatsoever about the complete lack of any such power or authority in the Tennessee court.

The Federal Employers' Liability Act was enacted by the Congress pursuant to the power vested in the Congress by Article I, Section 8, Clause 3 of the Constitution, empowering the Congress to regulate interstate commerce, and is a valid regulation of the rights and liabilities respecting employers' liability for injury to or death of employees of common carriers by railroad while engaged in interstate commerce (Second Employers' Liability Cases [Mondou v. New York, N. H. & H. R. Co.], 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327). Under the provisions of Article VI, Clause 2 of the Constitution, this act is "the supreme Law of the Land" respecting such rights and liabilities, binding upon "the judges in every State," and superseding "any Thing in the Constitution or Laws of any State to the Contrary." The effect of the enactment of this act was, in Second Employers' Liability Cases, supra, said by this Court to be:

> "* * * now that the Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is" (223 U. S., l. c. 55).

The doctrine of the superiority of the act over the laws of the states is fully applicable both to the statutory laws of the state (Spokane & I. E. R. Co. v. Campbell, 241 U. S. 497, 509, 36 S. Ct. 683, 60 L. Ed. 1125; New York Central R. Co. v. Winfield, 244 U. S. 147, 37 S. Ct. 546, 61 L. Ed. 1045; Erie R. Co. v. Winfield, 244 U. S. 170, 174, 37 S. Ct. 556, 61 L. Ed. 1057) and to the common law of the states as announced by their judicial decisions (Pryor v. Wil-

liams, 254 U. S. 43, 45-46, 41 S. Ct. 36, 65 L. Ed. 120; New York C. & H. R. R. Co. v. Tonsellito, 244 U. S. 360, 361-362, 37 S. Ct. 620, 61 L. Ed. 1194; Wabash R. Co. v. Hayes, 234 U. S. 86, 89, 34 S. Ct. 729, 58 L. Ed. 1226; Seaboard Air Line R. Co. v. Horton, 233 U. S. 492, 501, 34 S. Ct. 635, 58 L. Ed. 1062), it being said in the case last cited:

> "* * * it is settled that since Congress, by the act of 1908, took possession of the field of the employers' liability to employees in interstate transportation by rail, all state laws upon the subject are superseded."

It follows that all rights and liabilities respecting employers' liability for injury to or death of employees in interstate transportation by rail are regulated, both inclusively and exclusively, by the Federal Employers' Liability Act (New York Central R. Co. v. Winfield, supra), and that the entire subject included in the act is taken beyond the range of state laws, and the states cannot interfere with the operation of the act (Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 331).

Now, let us again advert to the fact that, by section 6 of the act (Act of April 22, 1908, v. 149, § 6, 35 Stat. 66, as amended by act of April 5, 1910, c. 143, § 1, 36 Stat. 291, 45 U. S. C. A., § 56) the respondent in the case at bar was given the right to bring her action "* * * in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business * * *". In undertaking to enjoin this respondent from further maintaining or prosecuting her action against petitioner railway under the act in the federal district court below in Missouri (in which district petitioner railway was doing business [R. 16, 26, 42]), or from instituting or prosecuting a similar action in any other place except the City of Knoxville, Tennessee (in which plaintiff resided, but in which the record fails to show that petitioner rail-

way here was doing business), or the district which included Madison County, North Carolina (in which respondent's cause of action arose), the Tennessee state court's injunction was, in effect, legislation which not only repealed one of the provisions of section 6 of the Federal Employers' Liability Act, and modified and limited another of those provisions, but, also, actually injected into that section of the act a provision which does not appear therein. The injunction issued by the Tennessee Chancery Court undertook (1) to deprive respondent entirely of her right to bring her action in the federal court at the place first provided for by the act, viz., in the district of the residence of petitioner railway at Richmond, Virginia; (2) to impair and limit the right of respondent to bring her action in a federal court in the places last provided for by the act, viz., the various federal districts in which the petitioner railway was doing business, and (3) to direct respondent to bring her action in the federal court at a place not provided for by the act, viz., the district of plaintiff's residence, where the railway might not be doing business. These things, we submit, the Tennessee state court was wholly without power or authority to do because "a state court cannot confer jurisdiction on a federal court, nor can it take it away" (Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 330), and because, if the Tennessee court can do those things and thereby abrogate and destroy that provision of the Federal Employers' Liability Act which fixes the venue and jurisdiction of federal district courts over actions brought under the act, the courts of any state can abrogate and destroy not only other provisions of that act, but of any federal statute fixing the venue and jurisdiction of any of the federal courts. To be more specific about it: if the Tennessee court can do what it did, the state courts of North Carolina, in a similar action, with equal plausibility could say that the action

could not be brought at Knoxville, Tennessee, away from the place where the cause of action arose, because some of the witnesses were residents of North Carolina; and, if the incidental burden imposed on interstate commerce be the sole test, what would prevent the Tennessee state court from prohibiting the cause of action being tried in Madison County, North Carolina, where the cause of action arose, upon the ground that a majority of the witnesses lived in Knoxville? As this Court so aptly said in Amy v. The Supervisors, 11 Wall. (78 U. S.) 136, 138, 20 L. Ed. 101:

> "* * * If the ground assumed by the State court in this case can be maintained, the Constitution of the United States, and the laws, made in pursuance thereof, as regards their judicial administration, instead of being the supreme law of the land, would be subordinated to the authority of the courts of every State in the Union."

(E) The bald facts are that the right existed on the part of the respondent in the case at bar to bring her action for injury to and death of her decedent, under the Federal Employers' Liability Act, in the federal district court in any district where the petitioner railway company was doing business, and the petitioner railway was doing business in the Eastern Judicial District of Missouri (R. 16, 26, 42), where and when this respondent brought her action in the federal district court below. This right of this respondent is, we repeat, an absolute federal right (Second Employers' Liability Cases [Mondou v. New York, N. H. & H. R. Co.], 223 U. S. 1, 57-58, 32 S. Ct. 169, 56 L. Ed. 327; State of Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor, 266 U. S. 200, 208, 45 S. Ct. 47, 69 L. Ed. 247; Hoffman v. State of Missouri ex rel. Foraker, 274 U. S. 21, 23, 47 S. Ct. 485, 71 L. Ed. 905; McKnett v. St. Louis-S. F. R. Co., 292 U. S. 230, 233-234, 54 S. Ct. 690,

78 L. Ed. 1227). That right, and the right and duty of the federal courts to exercise their jurisdiction in the enforcement of it, cannot be denied by implied qualifications, which do not appear in the clear and unequivocal terms of the federal act granting the right and fixing the jurisdiction of the courts for its enforcement, making such right and jurisdiction dependent upon and subject to such matters as inconvenience, expense, or burdensomeness, because the Congress, having the constitutional right to regulate and control the subject matter of the act, may place the burdens incidental to such regulation and control as it deemed fitting and proper (Second Employers' Liability Cases [Mondou v. New York, N. H. & H. R. Co.], 223 U. S. 1, 58, 32 S. Ct. 169, 56 L. Ed. 327; Hoffman v. State of Missouri ex rel. Foraker, 274 U. S. 21, 23, 47 S. Ct. 485, 71 L. Ed. 905; Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 334; Schendel v. McGee, 8 Cir., 300 F. 273, 278; Norris v. Illinois Central R. Co. [D. C. Minn.], 18 F. 2d 584; Connelley v. Central R. Co. [D. C. N. Y.], 238 F. 932; Trapp v. Baltimore & O. R. Co. [D. C. Ohio], 283 F. 655; Southern R. Co. v. Cochran, 6 Cir., 56 F. 2d 1019, 1020; Chesapeake & O. R. Co. v. Vigor, 6 Cir., 90 F. 2d 7, 8, certiorari denied 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545; Rader v. Baltimore & O. R. Co., 7 Cir., 108 F. 2d 980, 985 986, certiorari denied 309 U. S. 682, 60 S. Ct. 722, 84 L. Ed. 1026).

Let us briefly examine the language of the courts in a few of these decisions. In Second Employers' Liability Cases, supra, 223 U. S., l. c. 58, Mr. Justice Van Devanter said:

> "The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication."

In Hoffman v. State ex rel. Foraker, supra, 274 U. S.,

l. c. 23, Mr. Justice Brandeis, in speaking of the liability of a railroad company to submit to suit under the Federal Employers' Liability Act in any of the jurisdictions specified in section 6 of the act, said:

> "It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened. Compare Kane v. New Jersey, 242 U. S. 160, 167; St. Louis, Brownsville & Mexico Ry. v. Taylor, 266 U. S. 200."

In Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 334, it was said:

> "Appellant (railroad) also claims the right to an injunction in the state court existed on account of injustice, hardship, oppression, and fraud in bringing the action in another state. * * * The mere hardship of defending a suit brought elsewhere than in the district where plaintiff or witnesses reside is hardly sufficient to warrant the interference of equity. If so, jurisdiction given by Congress could be limited in practically every case." (Parenthetical portion supplied.)

In Rader v. Baltimore & O. R. Co., 7 Cir., 108 F. 2d 980, 985-986, certiorari denied 309 U. S. 682, 60 S. Ct. 722, 84 L. Ed. 1026, in holding a state court injunction to be wholly without force to restrain an action under the Federal Employers' Liability Act in a federal court, Circuit Judge Major said:

> "In Southern R. Co. v. Cochran, 6 Cir., 56 F. (2d) 1019, 1020, the court considered a similar question, and said: '* * * Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction upon a federal court is to place a burden upon interstate commerce,

the power for that purpose exists, and the remedy is legislative and not judicial. * * *'

"In McConnell v. Thomson, 213 Ind. 16, 8 N. E. (2d) 986, 11 N. E. (2d) 185, 113 A. L. R. 1429, the court considered the instant question, with an exhaustive review of the authorities, and reached the conclusion that a state court was without power to enjoin such action under circumstances similar to those here presented. The Court, 213 Ind. 16, 8 N. E. (2d), at page 991, 11 N. E. (2d) 183, 113 A. L. R. 1429, said: '* * * Consequently when a state court, as in the instant case, attempts to enjoin a litigant from prosecuting his cause of action, arising under the Federal Employers' Liability Act, in a District Court of the district in which the defendant is doing business, such action, if effective, destroys a federal right of the litigant and obstructs the performance of a duty imposed by act of Congress upon a District Court of the United States. This is beyond the power of a state court.'

"Other authorities are to the same effect."

In Chesapeake & O. R. Co. v. Vigor, 6 Cir., 90 F. 2d 7, certiorari denied 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545, in refusing an injunction to restrain the prosecution of an action, brought under Section 6 of the Federal Employers' Liability Act in an Indiana state court having appropriate jurisdiction, Circuit Judge Moorman said (90 F. 2d, l. c. 8):

"The plaintiff (railroad company), it is true, may suffer some inconvenience or be put to extra expense in producing witnesses to testify in court in the Indiana case, but it is to be presumed that Congress considered such probable inconvenience and expense in placing the action in any district in which the defendant should be doing business at the time. * * * The defense of the case could not, of course, place any unreasonable burden on interstate commerce, for, as is pointed out in the case just cited, Congress has the power to regulate interstate commerce and may, when

it sees fit, place incidental burdens thereon by jurisdictional statutes." (Parenthetical portion supplied.)

In Southern R. Co. v. Cochran, 6 Cir., 56 F. 2d 1019, in refusing an application to enjoin and restrain the prosecution of an action, brought under Section 6 of the Federal Employers' Liability Act in a federal District Court in Kentucky, Circuit Judge Simmons relied principally upon the authority of the decision in Schendel v. McGee, 8 Cir., 300 F. 273, and said (l. c. 1020):

> "Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction is to place a burden upon interstate commerce, the power for that purpose exists, and the remedy is legislative and not judicial. The precise question here presented was considered by the Circuit Court of Appeals for the Eighth Circuit in Schendel v. McGee, District Judge, 300 F. 273, 278. It was there said: 'We assume Congress could provide that actions in the federal courts should be brought at places where the same would not constitute a burden on interstate commerce, but Congress has not done so. It has been given the right under the Federal Employers' Liability Act, hereinbefore discussed, to an injured party, or in case of his death to the duly constituted representative, to maintain an action in the Courts of the district where the defendant is doing business at the time the suit is commenced. We are not concerned with the justice or the wisdom of such legislation. It being the law, it is a court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case.' "

The other authorities cited in this connection are to this same general effect, and it would serve no useful purpose to quote further from them. Suffice it here to say that they also rule that matters of convenience, expense or

burdensomeness to the defendant, and any matter of an incidental burden on interstate commerce, are no ground for either limiting or depriving a plaintiff of his right to select the place in which he will bring an action under the Federal Employers' Liability Act, or for affecting the right and duty of any court, whose ordinary jurisdiction is appropriate, to take and exercise jurisdiction over a case under that act.

The petitioner railway here cites, in support of its contention that interstate commerce is improperly and unreasonably burdened by the maintenance of an action at a place distant from that in which the cause of action arose, the decisions in Davis v. Farmers Cooperative Equity Co., 262 U. S. 312, 43 S. Ct. 556, 67 L. Ed. 996; Atchison, T. & S. F. R. Co. v. Wells, 265 U. S. 101, 44 S. Ct. 469, 68 L. Ed. 928; Eastman Kodak Co. v. Southern Photo Materials Co., 273 U. S. 359, 47 S. Ct. 400, 71 L. Ed. 684; Michigan Central R. Co. v. Mix, 278 U. S. 492, 49 S. Ct. 207, 73 L. Ed. 470; and Denver & R. G. W. R. Co., et al. v. Terte, 284 U. S. 284, 52 S. Ct. 152, 76 L. Ed. 295. The decisions in the cases of Davis v. Farmers Cooperative Equity Co., supra; Atchison, T. & S. F. R. Co. v. Wells, supra, and Michigan Central R. Co. v. Mix, supra, were all founded upon the decisive fact that the respective railroads in those cases were not operating any railroad so as to be "doing business" in the jurisdictions in which suit was brought against them—a fact which clearly distinguishes them from the case at bar because the petitioner railway company here was operating a railroad and "doing business" in the judicial district which encompassed the territorial jurisdiction of the federal district court below in Missouri (R. 16, 26, 42)—but in the Mix case (at page 495 of 278 U. S.) this Court clearly recognized the correctness of the decision in Hoffman v. State of Missouri ex rel. Foraker, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905, wherein it was held that, where the railroad was "doing business"

within the territorial jurisdiction of the court in which suit was brought against it under the Federal Employers' Liability Act, and said:

> "It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened" (274 U. S., l. c. 23).

The decisions in Eastman Kodak Co. v. Southern Photo Company, supra, and Denver & R. G. W. R. Co. et al. v. Terte, supra, so strongly relied upon by petitioner railway, are actually authorities against the railway's position here. In Eastman Kodak Co. v. Southern Photo Co., supra, this Court held proper (at pages 370-374 of 273 U. S.) the venue of the federal district court in Georgia in an action against a New York corporation which had no office, place of business, or agent in Georgia, but which carried on an interstate business there, under certain federal statutes providing that suit might be brought in the district wherein the defendant "may be found or transacts business." In Denver & R. G. W. R. Co. et al. v. Terte, supra, the necessary distinction here made is clearly emphasized. There suit was brought in a Missouri state court at Kansas City, upon a cause of action under the Federal Employers' Liability Act which arose at Pueblo, Colorado—some 625 miles away—against two railroads, one of which (the Denver & R. G. W. R. Co.) was not "doing business" in Missouri, and the other of which (the Atchison, T. & S. F. R. Co.) was "doing business" in that state and at Kansas City; and this Court there held (at pages 286-287 of 284 U. S.), upon the authority of Hoffman v. State of Missouri ex rel. Foraker, 274 U. S. 21, 42 S. Ct. 485, 71 L. Ed. 905, that the action could be maintained against the Atchison, T. & S. F. R. Co., which was "doing business" in Missouri, and also held that the action could not be maintained against the

Denver & R. G. W. R. Co., which was not doing business in Missouri, because to do so would be the unauthorized "imposition of a serious burden on interstate commerce" contrary to the doctrine of Davis v. Farmer's Cooperative Equity Co., supra; Atchison, T. & S. F. R. Co. v. Wells, supra, and Michigan Central R. Co. v. Mix, supra. Manifestly, in determining whether any given court has jurisdiction of an action brought under a federal statute authorizing suits against a defendant wherever the defendant is "doing business," the controlling factor is whether or not the defendant is, in point of fact, actually "doing business" within the territorial jurisdiction of that court, and not whether the institution and prosecution of such suit in that court would incidentally burden interstate commerce.

Does not the fact that, having full knowledge of the decisions now under discussion, the Congress, during the years which have intervened since those decisions, has not undertaken to modify section 6 of the act so as to remove the burden placed upon interstate commerce by the provisions of that section which provide for suit wherever the railroad may be "doing business," compel the thought that the Congress considers that burden a necessary one which has been placed appropriately upon the railroads?

(F) The Federal Employers' Liability Act is, by reason of its being the supreme law of the land, just as much the law of Tennessee, and just as much indicative of the public policy of Tennessee, as if incorporated in the constitution and statutes of that state.

We will not take much of this Court's time with discussion of this statement of the law, which is most obvious in the light of Article VI, clause 2, of the Constitution of the United States which provides, in effect, that the Constitution and laws of the United States shall be "the supreme law of the land," binding upon "the judges in every

state," notwithstanding "anything in the constitution or laws of any state to the contrary."*

In this connection, in Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.), 223 U. S. 1, 57-58, 32 S. Ct. 169, 56 L. Ed. 327, it was said, with reference to the Federal Employers' Liability Act, that:

> "The suggestion that the act of Congress is not in harmony with the policy of the State * * * is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. As was said by this Court in Claflin v. Houseman, 93 U. S. 130, 136, 137:
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> "'The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty * * *. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent * * *.'"

These matters are of importance here, because they serve completely to refute petitioner railway's contentions that

*How the Chancellor of the Tennessee Chancery Court could, in the light of this provision of the Federal Constitution, and in the light of Section 6 of the Federal Employers' Liability Act, be acting in the performance of his sworn duty to uphold the Constitution and laws of the United States, when he ordered issued the injunction against plaintiff here, we are unable to comprehend. (Compare Robb v. Connolly, 111 U. S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542.)

the Tennessee Chancery Court had jurisdiction to restrain this respondent because she was not merely a resident, but an "officer"—i. e., an administratrix appointed by and accountable to the courts of Tennessee—of that state, and because the proceeds of any recovery in her action for the death of her decedent constituted assets of his estate (Petitioner's Brief, pp. 17-20). The Federal Employers' Liability Act having given the personal representative of the deceased the right to bring the action in the federal district courts at any place where the railway was "doing business," and that act being just as much a part of the state law as if specifically written into the constitution and statutes of all the states, it cannot be said that the law of Tennessee, or the policy of that state, prevented the exercise of that right by the personal representative, or permitted the Tennessee state courts to prevent the exercise of that right upon the grounds of "equity."

We fully recognize the general rule that, ordinarily, an administrator or executor cannot sue or be sued in his official capacity in the courts of a jurisdiction foreign to that from which he derives his authority, but that general rule is without application to an administrator or executor who brings an action under the Federal Employers' Liability Act, and, therefore, without application here. If the laws of the state jurisdiction from which an administrator or executor derives his authority, and the laws of another state jurisdiction, authorize him to bring and maintain an action in the courts of the latter, what is there to prevent his bringing and maintaining such a suit? This last is the situation here presented because the Federal Employers' Liability Act, which is the law of all state and federal jurisdictions in the United States—including the State of Tennessee—gave this respondent the right to bring and maintain her action against petitioner under that act in the federal district court below in Missouri.

(G) Furthermore, the real fact of the matter is that respondent did not bring her action in the federal district court below in Missouri by virtue of her inherent right as the representative of the estate of her decedent, but by virtue of designation by the federal statute as trustee for designated dependent survivors of the decedent and for them alone (Chicago, B. & Q. R. Co. v. Wells-Dickey Trust Co., 275 U. S. 161, 163, 48 S. Ct. 73, 72 L. Ed. 216; Lindgren v. United States, 281 U. S. 38, 41, 50 S. Ct. 207, 74 L. Ed. 686; Reading Co. v. Koons, 271 U. S. 58, 62, 46 S. Ct. 405, 70 L. Ed. 835; Gulf, C. & S. F. R. Co. v. McGinnis, 228 U. S. 173, 175-176, 33 S. Ct. 426, 57 L. Ed. 785; Southern R. Co. v. Stewart, 8 Cir., 115 F. 2d 317, 321). Any recovery by her in such action does not become a part of the assets of the deceased's estate, is not subject to his debts, and is not to be distributed under any statutes of descents and distributions (authorities just above cited; Taylor v. Taylor, 232 U. S. 363, 34 S. Ct. 350, 58 L. Ed. 638). By reason of these facts it has been clearly and unequivocally held that an administrator or executor may bring and maintain an action under the Federal Employers' Liability Act in any of the courts given jurisdiction over such actions by section 6 of the act, even though such courts be outside the jurisdiction from which he derived his appointment as such administrator or executor (Gulf, M. & N. R. Co. v. Wood, 164 Miss. 765, 776-778, 146 So. 298, certiorari denied 289 U. S. 759, 53 S. Ct. 791, 77 L. Ed. 1502; Wells v. Davis, 303 Mo. 388, 397-405, 261 S. W. 58, 59-62. Compare, also, Dennick v. Central R. Co. of N. J., 103 U. S. 11, 26 L. Ed. 439).

III.

The injunction issued by the Chancery Court of Knox County, Tennessee, being void by reason of having been issued by a court which had no jurisdiction of the subject matter, is not entitled to be given "full faith and credit" so as to be binding upon either this Court or the Courts below.

The petitioner railway contends that this Court, and the district court below, were required, by the "full faith and credit" clause of Article IV, Section 1, of the Constitution of the United States, to give binding effect to the injunction issued by the Chancery Court of Knox County, Tennessee. Short shrift can be made of this contention.

In the first place, the contention made is predicated upon the assumptions that the Tennessee Court had jurisdiction, and that, therefore, the correctness of its decision is of no concern. We have, however, just heretofore shown that the Tennessee court had no jurisdiction of the subject matter of the bill filed in it by the petitioner railway.

In the second place, the "full faith and credit" clause does not require the federal courts, nor the courts of other states, to blindly give full faith and credit to, or to be conclusively bound by, the judgment of a state court which is void for want of jurisdiction. So, in Cole v. Cunningham, 133 U. S. 107, 112, 10 S. Ct. 269, 33 L. Ed. 538, this Court said:

> "*This ('full faith and credit' clause) does not prevent an inquiry into the jurisdiction of the court, in which a judgment is rendered, to pronounce the judgment, nor the right of the State to exercise authority over the parties or the subject matter,* nor whether the judgment is founded in, and impeachable for, a manifest fraud." (Parenthetical portion and emphasis supplied.)

In Board of Public Works v. Columbia College, 17 Wall. (84 U. S.) 521, 528, 21 L. Ed. 687, it was said:

> "The clause of the Federal Constitution which requires full faith and credit to be given in each State to the records and judicial proceedings of every other State, *applies to the records and proceedings of courts only so far as they have jurisdiction.* Wherever they want jurisdiction the records are not entitled to credit." (Emphasis supplied.)

In Huntington v. Attrill, 146 U. S. 657, 685, 13 S. Ct. 224, 36 L. Ed. 1123, it was said:

> "These provisions of the Constitution and laws of the United States are necessarily to be read in the light of some established principles, which they were not intended to overthrow. They give no effect to judgments of a court which had no jurisdiction of the subject matter or of the parties."

In Bigelow v. Old Dominion Copper Mining & Smelting Co., 225 U. S. 111, 134, 32 S. Ct. 641, 56 L. Ed. 1009, it was said:

> "it is therefore well settled that the courts of one State are not required to regard as conclusive any judgment of the court of another State which had no jurisdiction of the subject or of the parties,"

and there further said (225 U. S., l. c. 135):

> "The general effect of a judgment of a court of one State when relied upon as an estoppel in the courts of another State is that which it has, by law or usage, in the courts of the State from which it comes. But the faith and credit to be accorded does not preclude an inquiry into the jurisdiction of the court which pronounced the judgment or its right to bind the persons against whom the judgment is sought to be enforced."

In the light of these principles, and in the light of the fact that the State of Tennessee—whether acting through

its Chancery Court of Knox County, or otherwise—had no right to exercise any authority with respect to the subject matter of the bill of complaint filed in said Chancery Court by the petitioner railway, it is manifest that any contention respecting the "full faith and credit" clause of the Constitution is wholly without merit. In Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 334, the Court disposed of a similar contention by tersely saying:

> "It is apparent from what we have said that the point made by counsel for appellant that the ruling of the trial court denied full faith and credit to the public acts and jurisdictional proceedings to the State of Iowa, contrary to Article 4, Section 1, of the Constitution of the United States, is not, in our opinion, sound, as the order of the Iowa court, in so far as it affects the proceedings in the federal court of the United States for the district of Minnesota, is void."

IV.

The district court below had reason and occasion and power and authority to issue the injunction which it issued against petitioner railway.

Prefatory to extended discussion of the proposition just above announced, the respondent here desires to call attention to an incidental matter regarding it. The petitioner railway, in order to sustain its position here, has been compelled to take the highly specious and anomalous position of contending that the injunction issued against it by the federal district court below interfered with, and stayed the proceedings in, the Tennessee Chancery Court (Petitioner's Brief, p. 33), and at the same time contending that the injunction issued against this respondent by the Tennessee Chancery Court did not have the same effect upon the federal district court below, but was solely a personal restraint upon this respondent (Petitioner's Brief, pp. 43-44). Certainly, that position cannot be sustained, because this

Court, in the light of the manifest fact that the proceedings of a court are as much interfered with when one of the parties to a proceeding in the court is enjoined as if the court itself were enjoined, has long held that an injunction against a party is in legal effect an injunction against the court (Peck v. Jenness, 7 How. 48 U. S. 612, 625, 12 L. Ed. 841; Hill v. Martin, 296 U. S. 393, 403, 56 S. Ct. 278, 80 L. Ed. 293; Oklahoma Packing Co. v. Oklahoma Gas & E. Co., 309 U. S. 4, 9, 60 S. Ct. 215, 84 L. Ed. 537).

(A) The injunction issued by the Tennessee Chancery Court interfered with, impaired and tended to frustrate and defeat the jurisdiction of the federal district court below.

The nature and effect of the injunction issued by the Tennessee Chancery Court against respondent here (R. 34-35) is best demonstrated by its language which provided, in so far as is here material, that this respondent, individually and in her capacity as administratrix of the estate of her decedent, was "strictly commanded and enjoined, under the penalty of a contempt of Court" to "absolutely desist and refrain from prosecuting and maintaining" her action against petitioner railway here "now pending * * * in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri at the City of St. Louis." Now, in view of the facts that respondent was a necessary party to her action in the federal district court below, under the provisions of sections 1 and 9 of the Federal Employers' Liability Act (45 U. S. C. A., §§ 51, 59), which required the action for the injury to and death of Geoffrey Painter to be brought in the name of his "personal representative,"* and that the respondent here, in both her capacity as "personal representative" of the deceased and individually, is a proper,

*There is no pretense that there is any "personal representative" of the deceased other than the respondent here.

necessary and material witness for the trial of her action (R. 16, 43), it is manifest that the injunction issued by the Tennessee Chancery Court, which attempts to restrain plaintiff absolutely from prosecuting and maintaining her action in the federal district court below—and thereby attempts to restrain her from testifying in that action either at the trial or by deposition—not only specifically undertook to "stay the proceedings" in the federal district court below, but attempted to otherwise seriously arrest, interfere with, impair, frustrate and defeat the jurisdiction of that court. In Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, the court had before it a situation where the plaintiff in a case pending in a federal court was not enjoined, but where material witnesses had been enjoined by a state court from testifying in the plaintiff's action, and the Eighth Circuit Court of Appeals there said:

> "* * * a federal court cannot proceed within its jurisdiction, if witnesses can be prevented by a state court from testifying therein" (l. c. 333).
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> * * * * * * *
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> "The state court had no right to interfere by preventing witnesses giving testimony and thus practically destroying the power of the federal court to act" (l. c. 334).

(B and C) The federal district court below had plenary power to issue its injunction to preserve and protect its jurisdiction of and over respondent's action under the Federal Employers' Liability Act.

Before going further, let respondent here be thoroughly understood as fully recognizing the general rule that where the state and federal courts have concurrent jurisdiction over the subject matter of a cause of action in personam, separate actions may be maintained on that cause of action concurrently pari passu, in both a state and a federal court, because the jurisdiction of the two courts is entirely

independent of each other and without a common superior, and neither of such courts can enjoin or prevent the prosecution of the action in the other (Kline v. Burke Construction Co., 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226). This principle would have precluded any attempt by the federal district court below from enjoining the prosecution in the courts of Tennessee, or of any other state, of an action by respondent founded in her cause of action against petitioner railway for the injury to and death of her decedent (Chesapeake & O. R. Co. v. Vigor, 6 Cir., 90 F. 2d 7, certiorari denied 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545, discussed ante, pp. 41-42), and it is that principle which likewise precludes the state courts of Tennessee from enjoining or preventing the prosecution of the respondent's action under the Federal Employers' Liability Act in the federal district court below in Missouri.

The principl just above adverted to, however, has no application to the relief sought by respondent by her supplemental complaint in the federal district court below, nor to the injunction issued by the federal district court below upon that supplemental complaint, because that relief was not sought, and that injunction was not issued, to enjoin, restrain or stay proceedings in the Tennessee courts of an action involving the subject matter of the respondent's action in the federal district court below, but the relief sought, and granted by the federal district court below, was to require the petitioner railway, over whom the district court below had jurisdiction in an action pending before it, to do and refrain from doing certain things, so as to preserve and protect the proper jurisdiction of the district court below over the subject matter of, and the parties to, the action properly pending before it. The distinction which we make is quite apparent if it be borne in mind that the subject matter of respondent's action in the federal district court below is the adjudication of her

right of recovery of, and petitioner railway's liability for, damages for the injury to and death of her decedent. The federal district court below, and that court alone, has jurisdiction of that action and the subject matter of it,* and the Tennessee Chancery Court has never had jurisdiction of that action or its subject matter. The Tennessee court, simply, never at any time had before it the question of respondent's right to recover, and petitioner railway's liability for, damages for the injury to and death of respondent's decedent; the subject matter of the proceeding brought by the railway in that court was the right of injunction to restrain and enjoin a resident of Tennessee from further maintaining and prosecuting an action in a federal court.

The distinction which we here make in this connection is not only a clear and common-sense proposition, but it has been specifically passed upon in Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326. There the injunction suit was brought in the state court, to prevent the witnesses from testifying, before the action under the Federal Employers' Liability Act was brought in the federal court, but the Court, in upholding the right, duty and power of the federal court to protect its jurisdiction by enjoining the injunction proceeding in the state court, said (l. c. 333-334):

> "The suit in the state court to enjoin witnesses from testifying in the case * * * was commenced prior to the suit in the United States District Court in Minnesota. *The subject matter of the suit in the state court was not the cause of action for the death of Baker* (plaintiff's intestate). *The subject matter of the action in the federal court was damages arising from said death. No state court had acquired juris-*

*No other action has ever been brought in any court to adjudicate the respondent's right of recovery of, and petitioner railway's liability for, damages for the injury to and death of respondent's decedent (R. 17, 44-45).

diction of this cause of action. The jurisdiction was in the federal court, and the fact that an injunction suit was brought in the state court prior to commencing the action in the federal court could not give any jurisdiction of a matter not embraced therein. If, when an action is about to be brought in a proper jurisdiction in a federal court, the defendant can secure a sweeping injunction against witnesses appearing and testifying in that court in any action not yet brought, or giving testimony by deposition, it would be a perversion of the law to say that thereby the state court had acquired jurisdiction, and the federal court could not complain or interfere. The jurisdiction of the federal court would be impaired or defeated by such a proceeding, the same as if the proceeding had been brought subsequent to the one in the federal court. The state court had acquired no jurisdiction of the subject matter. The federal court, having acquired such jurisdiction, had the right to retain and protect it from interference until the determination of the cause. The state court had no right to interfere by preventing witnesses giving testimony and thus practically destroying the power of the federal court to act. If the federal courts under such circumstances cannot protect their jurisdiction, they become impotent as instrumentalities of justice.

* * * * * * *

"As we hold the federal court had jurisdiction of the subject matter of this action, and as the order of the state court interfered with and impaired the same, it (the Federal District Court) had the right to issue the order in question, and to direct appellant to dismiss its action in the state court." (Parenthetical portions and emphasis supplied.)

Now, the petitioner railway here recognizes "the rule of protection of first acquired jurisdiction" (Petitioner's Brief, p. 33) which creates in a court the right, duty, power and authority to protect its jurisdiction by injunction against interference, impairment, arrest or defeat, by

enjoining proceedings which might tend to so affect that jurisdiction—and the existence of that rule will be clearly demonstrated by the authorities from which presently we shall quote. Petitioner railway, however, contends that section 265 of the Judicial Code (28 USCA, § 379, and formerly § 720, Revised Statutes) limits that power or authority in the federal courts, where the effect of a federal court injunction is to stay proceedings, with but few exceptions in actions ir rem or quasi in rem which do not include a situation where the federal court has first acquired jurisdiction of an action at law in personam. At the expense of brevity, we will quote from a few of the many pertinent authorities in order to demonstrate conclusively that a federal court has plenary power and authority to enjoin and require a party to a cause before it, and over whom that court has jurisdiction in that case, to take or refrain from taking action to prevent interference with, or impairment, arrest, frustration or defeat of, that court's jurisdiction over that cause, irrespective of the nature and character of the particular cause, and irrespective of section 265 of the Judicial Code.

In 32 Corpus Juris, pp. 87-88, Sec. 77, it is said:

> "Where a court whose power is adequate to the administration of complete justice in the premises has acquired jurisdiction of a case, the litigation should be confined to that forum, and any attempt by either party to divert the litigation to another court will be restrained by injunction. * * * The observance of this rule is essential to the due and orderly administration of justice and the integrity of judgments and decrees. * * *"

In Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. R. Co., 294 U. S. 648, 675-676, 55 S. Ct. 595, 79 L. Ed. 1110, it was said:

> "The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdic-

tion is, therefore, inherent in a court, * * *. Section 262 of the Judicial Code, which authorizes the United States courts 'to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions,' recognizes and declares the principle. An example of its application is found in Kline v. Burke Constr. Co., 260 U. S. 226, 229, 67 L. Ed. 226, 229, 43 S. Ct. 79, 24 A. L. R. 1077, where we held that a Federal court, having first acquired jurisdiction of the subject matter, could enjoin the parties from proceeding in a state court of concurrent jurisdiction 'where the effect of the action would be to defeat or impair the jurisdiction of the Federal court.' An injunction may be issued in such circumstances for the purpose of protecting and preserving the jurisdiction of the court 'until the object of the suit is accomplished and complete justice done between the parties.' Looney v. Eastern Texas R. Co., 247 U. S. 214, 221, 62 L. Ed. 1084, 1087, 38 S. Ct. 460."

So, in Kline v. Burke Construction Company, 260 U. S. 226, 228-229, 43 S. Ct. 79, 67 L. Ed. 226, it was said:

"Section 265 of the Judicial Code provides: 'The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' But this section is to be construed in connection with § 262, which authorizes the United States courts 'to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.' See Julian v. Central Trust Co., 193 U. S. 93, 112; Lanning v. Osborne, 79 Fed. 657, 662. It is settled that where a federal court has first acquired jurisdiction of the subject matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent juris-

diction where the effect of the action would be to defeat or impair the jurisdiction of the federal court."

In Wells Fargo & Co. v. Taylor, 254 U. S. 175, 41 S. Ct. 93, 65 L. Ed. 205, this Court, speaking of Section 265 of the Judicial Code, and its limitation upon the power of federal courts, said (254 U. S., l. c. 183):

"The provision has been in force more than a century and often has been considered by this court. As the decisions show, it is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which of course is not contemplated. As with many other statutory provisions, this one is designed to be in accord with, and not antagonistic to, our dual system of courts. In recognition of this it has come to be settled by repeated decisions and in actual practice that, where the elements of federal and equity jurisdiction are present, the provision does not * * * prevent them from maintaining and protecting their own jurisdiction, properly acquired and still subsisting, by enjoining attempts to frustrate, defeat or impair it through proceedings in the state courts. French v. Hay, 22 Wall. 250; Julian v. Central Trust Co., 193 U. S. 93, 112; Chesapeake & Ohio Ry. Co. v. McCabe, 213 U. S. 207, 219; Looney v. Eastern Texas R. R. Co., 247 U. S. 214, 221."

And in Looney v. Eastern Texas R. Co., 247 U. S. 214, 221, 38 S. Ct. 460, 62 L. Ed. 1084, it was said:

"The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject matter of a suit, for the purpose of protecting

and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice. Freeman v. Howe, 24 How. 450; Harkrader v. Wadley, 172 U. S. 148, 163, 164; in a rate case, Missouri v. Chicago, Burlington & Quincy R. R. Co., 241 U. S. 533, 543. So important is it that unseemly conflict of authority between state and federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other, that § 265 of the Judicial Code, Rev. Stats., § 720, Act of March 2, 1793, c. 22, 1 Stat. 334, has repeatedly been held not applicable to such an injunction. Julian v. Central Trust Co., 193 U. S. 93, 113; Simon v. Southern Ry. Co., 236 U. S. 115."

In Hull v. Burr, 234 U. S. 712, 723, 34 S. Ct. 892, 58 L. Ed. 1557, it was said:

"It is recognized, however, that § 720 (Section 265 of the Judicial Code) was not intended to limit the power of the Federal courts to enforce their authority in cases that on other grounds are within their proper jurisdiction; and, hence, it has been [illegible], in aid of its jurisdiction properly acqui[illegible]der to render its judgments and decrees [illegible] Federal court may restrain proceedings in a state [illegible]rt which would have the effect of defeating or impairing such jurisdiction. French, Trustee, v. Hay, 22 Wall. 250; Dietzsch v. Huidekoper, 103 U. S. 494, 497; Julian v. Central Trust Co., 193 U. S. 93, 112; Traction Co. v. Mining Co., 196 U. S. 239, 245." (Parenthetical portion supplied.)

In Julian v. Central Trust Company, 193 U. S. 93, 24 S. Ct. 399, 48 L. Ed. 629, it was said (193 U. S., l. c. 112):

"In such cases where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding sec. 720, Rev. Stat. (Section 265 of the Judicial Code), restrain all proceedings in a state court which would have the effect of

defeating or impairing its jurisdiction. Sharon v. Terry, 36 Fed. Rep. 337, per Mr. Justice Field; French v. Hay, 22 Wall. 250; Deitzsch v. Huidekoper, 103 U. S. 494." (Parenthetical portion supplied.)

And the foregoing quotation was quoted and adopted in Riverdale Cotton Mills v. Alabama & Georgia Mfg. Co., 198 U. S. 188, 196, 25 S. Ct. 429, 49 L. Ed. 1008.

In discussing the power of the federal courts to enjoin proceedings in a state court, notwithstanding Judicial Code, § 265, in order to fully exercise and protect its jurisdiction, it is said, in High on Injunctions, 4th Ed., § 110, p. 126:

> "In such a case—the (Federal) court having jurisdiction in personam over the parties, and having control over the cause—it will not permit its jurisdiction to be trenched upon by any other tribunal, and may properly enjoin a party to the proceeding from proceeding beyond the jurisdiction of the court."

In 14 Am. Jur., pp. 454-456, § 260, in discussing the effect of Judicial Code, § 265, upon the power of the federal courts to restrain proceedings in a state court, it is said:

> "This provision, however, has been regarded as limited in its application to those cases where proceedings have been begun in a state court before the commencement of proceedings in a Federal tribunal; otherwise, after suit brought in a Federal court, a party defendant could, by resorting to a suit in a state court, defeat, in many ways, the effective jurisdiction and action of the Federal Court, after it had obtained full jurisdiction of person and subject matter. It is to be construed in connection with the provisions of the Revised Statutes that the Federal courts shall have power to issue all writs which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law."

Relying upon the general rule that, where state and fed-

eral courts have concurrent jurisdiction of the subject matter of a cause of action, separate actions may be maintained concurrently upon such cause of action pari passu in both a state and a federal court because of the independence and lack of a common superior of the two courts, petitioner railway seeks to avoid the effect of the foregoing authorities by contending (a) that the district court below was without power or authority to enjoin or affect the jurisdiction of the Tennessee state court, for that would be an improper interference with the jurisdiction of that state court, and (b) that the exceptions to Section 265 of the Judicial Code are limited to cases removed from the state to the federal courts, or to actions in rem and quasi in rem. Let us briefly consider these contentions in this order.

How can there be sustained the paradoxical position that the injunction of the district court below is improper because it interferes with the jurisdiction of the Tennessee state court, when the proceeding in that state court, which was instituted long after the action in the district court, indisputably interferes with, impairs, arrests, frustrates and defeats the jurisdiction of the district court over the action previously brought and pending in it? How can the petitioner railway sustain its position that the Tennessee state court has a right to be free from interference with its jurisdiction, superior to the right of the district court below to be free from like interference? Is not the federal district court below entitled to the same freedom from interference with its jurisdiction as is the Tennessee court? The answers to these questions are obvious, and, notwithstanding the absence of a statutory prohibition and limitation upon state courts such as is put upon the federal courts by Section 265 of the Judicial Code, such a prohibition and limitation upon the power and authority of the state courts exists, and will be enforced, the same

as if there were a controlling statute. This is demonstrated not only by what has heretofore been said under point II of this brief, but by the decision in Essanay Film Co. v. Kane, 258 U. S. 358, 361, 42 S. Ct. 318, 66 L. Ed. 658, where, in discussing Section 265 of the Judicial Code, it was said:

> "Since 1793, the prohibition of the use of injunction from a federal court to stay proceedings in a state court has been maintained continuously, and has been consistently upheld. Hull v. Burr, 234 U. S. 712, 723, and cases cited. In exceptional instances, the letter has been departed from while the spirit of the prohibition has been observed; for example, in cases holding that, in order to maintain the jurisdiction of a federal court properly invoked, and render its judgments and decrees effectual, proceedings in a state court which would defeat or impair such jurisdiction may be enjoined. French v. Hay, 22 Wall. 250; Dietzsch v. Huidekoper, 103 U. S. 494, 497; Julian v. Central Trust Co., 193 U. S. 93, 112; Madisonville Traction Co. v. St. Bernard Mining Co., 196 U. S. 239, 245; Looney v. Eastern Texas R. R. Co., 247 U. S. 214, 221. *The effect of this, as will be observed, is but to enforce the same freedom from interference, on the one hand, that it is the prime object of § 265 to require on the other.*" (Emphasis supplied.)

The contention that the power and authority of a federal court to restrain proceedings in a state court which interferes with the jurisdiction of the former is limited by Section 265 of the Judicial Code to cases in the federal court which are removed thereto from a state court, or are actions in rem or quasi in rem, seeks to read into the authorities hereinbefore mentioned a limitation which does not appear therein, and which is opposed to logic and common sense; and it overlooks the foundation and basis for the doctrine that, where a federal court has first acquired jurisdiction of the subject matter of a cause of

action, it may enjoin the parties from proceeding in a state court where the effect of such a proceeding would be to defeat or impair the jurisdiction of the federal court. This doctrine is a rule of necessity, to preserve the independence of the federal courts, and is founded in the fact that the proceeding in the state court interferes with the jurisdiction of the federal court. The fact that the action in the federal court is a case removed from a state court, or an action in rem or quasi in rem, which is interfered with by state court proceedings, is merely demonstrative of the necessity for the federal court to enjoin the state court proceeding, but it is certainly no limitation upon the right and power of the federal court to enjoin. If a proceeding instituted in a state court has the effect of interfering with, arresting, impairing, frustrating and defeating the jurisdiction of a federal court over an action of which the federal court had first acquired jurisdiction, what possible difference can it make, with respect to the necessity and right of the federal court to restrain and enjoin such interference with its jurisdiction, that the action in the federal court is not one removed from a state court, or is not one in rem or quasi in rem? Is the power, authority and jurisdiction of the federal court to be destroyed by the proceeding in the state court merely because the action pending in the federal court does not happen to be within one of these particular classes? Is the federal court to be rendered powerless to perform its functions and duties cast upon it by the laws of the United States, and thereby impotent as an instrumentality of justice, merely because the action before it does not happen to come within one of those classes? Is the plaintiff in the federal court to be deprived of the rights granted him by the federal law—the "supreme law of the land"—to institute and prosecute his action in the federal courts, merely because his action does not come within one of the speci-

fied classes? Is the federal court to be deprived of that independence of action which is the very foundation for the principle that, where the state and federal court have concurrent jurisdiction over the subject matter of a cause of action, each may proceed without interference from the other, merely because the action in the federal court does not happen to be within one of these three classes? The obvious, and exclusive, answer to these questions is the negative, and further argument of this matter is certainly superfluous in the light of the decision in Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 334, wherein, upon like authority, it was said:

> "As we hold the federal court had jurisdiction of the subject matter of this action, and as the order of the state court interfered with and impaired the same, it (the federal court below) had the right to issue the (injunctive) order in question, and direct the appellant to dismiss its action in the state court." (Parenthetical portions supplied.)

Petitioner railway suggests (Petitioner's brief, pp. 38-40), upon the authority of Railroad Commission of Texas v. The Pullman Company, 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. (Adv. Op.) 580, that, for the purpose of the public interest, the rightful independence and harmonious relationship of the state and federal governments, and the smooth working of the federal judiciary, the federal district court below should have exercised its wide equitable discretion and abstained from issuing its injunction against the petitioner which stayed the proceedings in the Tennessee Chancery Court. We submit that, if anyone should have exercised abstention for those purposes, it was the petitioner railway and the Tennessee state court. When they disrupted the rightful independence and harmonious relationship of the state and federal judicial systems, and created needless friction between the federal district court

below and the Tennessee Chancery Court, by the injunction issued by the Tennessee state court at petitioner railway's instance, was the federal district court below compelled to sit idly by and be rendered completely impotent as an instrumentality of justice by the conduct of a litigant before it? Or could the federal district court below exercise its plain duty to protect its jurisdiction to hear to judgment the respondent's action under the Federal Employers' Liability Act, over which it had full, complete, sole and exclusive jurisdiction?

The correct doctrine appears to have been most aptly stated by the Circuit Court of Appeals for the Eighth Circuit when, in its decision below of the case at bar, it said:

> "The compelling ground of decision * * * [is] the necessity that federal courts be free to decide cases within their jurisdiction without interference by state courts. The state and federal system of concurrent jurisdiction compels that courts of concurrent jurisdiction be left free to decide such in personam actions for money judgment as may be before them. * * * We think that the nature of the dual system compels the conclusion that a state court which assumes to enjoin such an action in a federal court does so in excess of its jurisdiction and renders a decree which is void in so far as it affects proceedings in a federal court. Such a void decree is not entitled to full faith and credit and its enforcement may be enjoined" (117 F. 2d, l. c. 106; R. 90).

Bryant v. Atlantic Coast Line R. Co. Discussed.

Petitioner railway here relies strongly upon the decision of the Circuit Court of Appeals for the Second Circuit in Bryant v. Atlantic Coast Line R. Co., 2 Cir., 92 F. 659, and contends that that decision is better reasoned than the decisions of the Circuit Court of Appeals for the Eighth Circuit in this case below (117 F. 2d 100) and in Chicago,

M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, upon the assertion that the latter two cases erroneously misinterpreted the decision in Kline v. Burke Construction Co., 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226, which clearly and unequivocally ruled that a federal court could not enjoin the prosecution in a state court of an action in personam for a money judgment upon the ground that a like action was pending in the federal court between the same parties.

We respectfully submit, however, that the decision in Bryant v. Atlantic Coast Line R. Co., supra, is clearly shown by its own language to be highly erroneous and inconsistent with the decision in Kline v. Burke Construction Co., supra, and that the decisions of the Eighth Circuit Court of Appeals in this case, and in Chicago, M. & St. P. R. Co., supra, are correct and consistent with the Kline case.

The case of Bryant v. Atlantic Coast Line R. Co., supra, involved a set of facts substantially identical with those in the case at bar, but there it was held that the federal district court was without authority to issue an injunction to protect its jurisdiction against interference by an injunction issued by a state court. The Bryant case asserts itself to be founded in the doctrine announced in Kline v. Burke Construction Co., supra, for it said:

> "• • • the very purpose of Kline v. Burke Const Co., supra, was to reaffirm—for it was an old doctrine—that two actions in personam upon the same cause of action may go on pari passu in different jurisdictions" (92 F. 2d, l. c. 571),

but the decision in the Bryant case had the effect of being directly contradictory to the doctrine of the Kline case by permitting a state court injunction to arrest the prosecution of an action pending in a federal court. The Bryant case ignored and avoided the rule that "a state court is

destitute of all power to restrain the proceedings in a federal court," by reason of its erroneous conception that the subject matter of the cause of action involved in the employee's action under the Federal Employers' Liability Act pending in federal court was the same as the subject matter of the cause of action involved in the railway's injunction proceeding in the state court to restrain the employee from prosecuting his action in the federal court—the error of which conception is clearly shown by the discussion heretofore made under Point IV of this brief, ante, pp. 54-56, demonstrating that the subject matter of the two causes of action is entirely different. Furthermore, if the two proceedings did involve the same cause of action, how could the Second Circuit Court of Appeals hold in the Bryant case—as it did hold—that the state court injunction proceeding could have the effect of staying the prosecution of the action under the Federal Employers' Liability Act in the federal court, without doing severe violence to the very doctrine upon which the decision purports to be founded, viz.: "that two actions in personam upon the same cause of action may go on pari passu in different jurisdictions"? This distinction was clearly recognized by the Eighth Circuit Court of Appeals in Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F., l. c. 333-334. In the decision of the case at bar below, the Eighth Circuit Court of Appeals went to some length (117 F. 2d, l. c. 106-107; R. 90-92) to demonstrate that both its decision in the case at bar and in Chicago, M. & St. P. R. Co., supra, were in full accord with the decision of this Court in Kline v. Burke Construction Co., supra, and, with reference to the decision of the Second Circuit Court of Appeals in Bryant v. Atlantic Coast Line R. Co., supra, said:

> "• • • interference by one court or the other with the trial of such actions [i. e., actions in personam

for money judgments] is the very thing which the opinion in the Kline case was intended to prevent. We think that the application of the Kline case to permit such interference would subvert its true intent and would defeat its intendment. The balance between Sections 262 and 265 of the Judicial Code lies at the point where one court interferes with the other. Neither state nor federal court has jurisdiction to enjoin the other except when one interferes with the province of the other, then the court interfered with has exclusive jurisdiction to prevent the interference" (117 F. 2d, l. c. 107; R. 91).

We most respectfully submit that the decisions of the Eighth Circuit Court of Appeals in the instant case (117 F. 2d 100; R. 78-94), and in Chicago, M. & St. P. R. Co. v. Schendel, 292 F. 326, are eminently correct and proper, and that the decision of the Second Circuit Court of Appeals in Bryant v. Atlantic Coast Line R. Co., 92 F. 2d 569, is erroneous and should not be followed. The Bryant case is the only case that we have been able to find holding it proper for a state court to enjoin proceedings in a federal court.

V.

No state or federal court, other than the federal district court below in Missouri, is open or available to respondent for the prosecution of her cause of action for the injury to and death of her decedent.

We feel compelled to bring the above-stated situation to the attention of this Court before we conclude this argument.

The petitioner railway company has in several instances (Cf. Petitioner's Brief, pp. 17, 20) asserted that the state and federal courts in Tennessee and North Carolina are open and available to respondent for the institution and

prosecution of her action for damages for the death of her decedent under the Federal Employers' Liability Act. That assertion is, simply, utterly false and without any foundation whatsoever.

The record in this case clearly shows, and it is the fact, that no suit or action, other than respondent's action pending in the federal district court below in Missouri, has been brought in any state or federal court to adjudicate the right of the personal representative of the deceased (or of his surviving widow and dependent minor children) to recover, or to adjudicate the liability of the petitioner railway company for, damages for the injury to and death of the deceased, Geoffrey L. Painter (R. 17, 44-45). The injury to and death of said deceased indisputably occurred on February 3, 1939 (R. 3, 8, 11, 14-15, 42-43; see, also, Petitioner's Brief, p. 4), at which time section 6 of the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; 45 U. S. C. A., § 56) provided, in so far as is here material:

> "No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued."

This provision of the statute consistently and repeatedly has been ruled a limitation on the right of action, rather than a mere limitation on the remedy only, so that compliance with this provision is a condition to the right of action (Atlantic Coast Line R. Co. v. Burnette, 239 U. S. 199, 36 S. Ct. 75, 60 L. Ed. 226; Reading Co. v Koons, 271 U. S. 58, 46 S. Ct. 405, 70 L. Ed. 835; Flynn v. New York, N. H. & H. R. Co., 283 U. S. 53, 51 S. Ct. 357, 75 L. Ed. 837; Wabash R. Co. v. Bridal, 8 Cir., 94 F. 2d 117, 121, certiorari denied 305 U. S. 602, 59 S. Ct. 63, 83 L. Ed. 382; Rademaker v. E. D. Flynn Export Co., 5 Cir., 17 F. 2d 15,

17). It necessarily follows that neither the respondent, nor anyone else, can now—more than two years after the cause of action accrued—institute and maintain any other action, in any other state or federal court, to recover damages under the Federal Employers' Liability Act for the injury to and death of respondent's decedent, Geoffrey L. Painter, and, this, notwithstanding the amendment of section 6 of the Federal Employers' Liability Act on August 11, 1939 (Act of Aug. 11, 1939, c. 685, § 2, 53 Stat. 1404), extending the limitation from two to three years, because that latter act is not retroactive (Winfree v. Northern Pacific R. Co., 227 U. S. 296, 33 S. Ct. 273, 57 L. Ed. 518; Morrison v. Baltimore & O. R. Co., 40 App. D. C. 391, Ann. Cas. 1914 C, 1026).

Not only is petitioner's assertion, to the effect that courts other than the federal district court below in Missouri are open and available to respondent for the prosecution of a cause of action under the Federal Employers' Liability Act for damages for the injury to and death of her decedent, utterly false, but to sustain the petitioner here would be to deprive respondent completely of a right of action prescribed by a federal statute, and to deprive the dependents of the deceased completely of compensation to which they are entitled under a statute of the United States for his injury and death, notwithstanding that respondent instituted an action thereon within the time specifically prescribed by the federal statute, and in a court specifically prescribed by the federal statute as being a proper court for the enforcement of the right.

The fact of the matter is that, when petitioner railway instituted the proceedings in the Tennessee Chancery Court on May 27, 1940 (R. 17, 43), this respondent's action against the railway in the federal district court below under the Federal Employers' Liability Act was set for

trial on July 8, 1940 (R. 61), and would have been tried and disposed of at that time—almost fifteen months ago—had not the proceedings in the Tennessee Chancery Court intervened and prevented such trial and disposition of respondent's case. Certainly, the equities of the matter are with respondent and not with petitioner railway.

CONCLUSION.

In conclusion, we most respectfully submit that, for the reasons and upon the authorities hereinbefore discussed, the decisions of the courts below in this case were eminently correct and proper. To hold otherwise would, ultimately, require this Honorable Court to place its approval upon the following results, viz.:

(1) That the right to maintain transitory actions wherever the defendant can be found no longer exists.

(2) That Section 6 of the Federal Employers' Liability Act, providing that actions under the act may be brought in a district in which the defendant shall be doing business, is meaningless, and is subordinate and must yield to an ex parte injunction issued by a state court, or any other state action.

(3) That any state can, by either judicial, legislative or executive action, override any law of Congress, even though concededly valid.

(4) That any state court can compel any citizen of that state to try his litigation wherever that court may determine is most convenient, irrespective of the venue statutes of that state, irrespective of any federal statute, and irrespective of the general rule as to transitory actions.

(5) That any state may deprive any citizen of that

state of a federal right, specifically given him by the federal law, because the state may deem such right contrary to its public policy.

(6) That a state court may interfere with, impair, frustrate, defeat and destroy the jurisdiction of a federal court over a controversy of which the latter first acquired complete jurisdiction, and over which it alone was exercising jurisdiction.

(7) That a state court may, by ex parte injunction, do that which the state in its sovereign capacity could not do, that is, limit and restrict the right of its citizens to resort to the federal courts in their litigation, and limit, restrict or enlarge upon the jurisdiction of the federal courts.

(8) That, under the guise of equity, a defendant railway company may interfere with, limit, restrict, impair, frustrate and defeat both the federal rights of others, and the jurisdiction of the federal courts, merely because the exercise of that right and that jurisdiction might be inconvenient, expensive or burdensome to the railway company.

(9) That a defendant railway company has, irrespective of all state and federal statutes, the absolute right to select the forum in which it may be sued by others for the enforcement of the latter's rights.

(10) That the constitutional supremacy of the laws of the United States, and the independence of the federal judicial system, are nonexistent.

Other similar paradoxical and anomalous results which would necessarily follow from a holding other than that made by the courts below in this case can readily be brought to mind. If such results can exist, then the fed-

eral law and the federal courts are useless, futile and impotent things.

We, therefore, most respectfully submit that the judgments and orders of the courts below in this case not only should, but must, be affirmed.

Respectfully submitted,

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Attorneys for Respondent.

APPENDIX.

The various pertinent provisions of the Federal Employers' Liability Act, and the Judicial Code, involved in this case, are as follows:

Federal Employers' Liability Act.

Sec. 1. Every common carrier by railroad while engaging in commerce between any of the several states * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence * * * of such carrier, * * *. (Apr. 22, 1908, c. 149, § 1, 35 Stat. 65, 45 U. S. C. A. § 51.)

Sec. 6. No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued. Under this chapter an action may be brought in a district court of the United States in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action * * *. (Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended Apr. 5, 1910, c. 143, § 1, 36 Stat. 291, 45 U. S. C. A., § 56.)

Sec. 9. Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the

next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury. (Apr. 5, 1910, c. 143, § 2, 36 Stat. 291, 45 U. S. C. A., § 59.)

Judicial Code.

Sec. 262. The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit court of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (Mar. 3, 1911, c. 231, § 262, 36 Stat. 1162, 28 U. S. C. A., § 377.)

Sec. 265. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (Mar. 3, 1911, c. 231, § 265, 36 Stat. 1162, 28 U. S. C. A., § 379.)

SUPREME COURT OF THE UNITED STATES.

No. 24—October Term, 1941.

Southern Railway Company, Petitioner, *vs.* Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased.	On Writ of Certiorari to United States Circuit Court of Appeals for the Eighth Circuit.

[November 17, 1941.]

Mr. Justice Frankfurter delivered the opinion of the Court.

On August 31, 1939, respondent brought an action against petitioner in the federal District Court for the Eastern District of Missouri to recover damages under the Federal Employers' Liability Act, 35 Stat. 65; 45 U. S. C. § 51 *et seq.*, for the wrongful death of her husband while employed by petitioner as a fireman on an interstate train operated between points in Tennessee and North Carolina. While this action was pending, petitioner filed a bill in the Chancery Court of Knox County, Tennessee, alleging that respondent and the deceased were citizens of Tennessee; that petitioner, a Virginia corporation having its principal office in Richmond, Virginia, does no business in Missouri other than of an interstate character; that the accident occurred in Madison County, North Carolina, "just beyond the North Carolina-Tennessee line"; that the Missouri federal court is more than 500 miles distant from respondent's residence, the residence of petitioner's witnesses, and the place where the accident occurred; that petitioner could not transport its witnesses to Missouri except at "enormous expense"; that respondent's purpose in bringing suit in Missouri was to evade the law of Tennessee and North Carolina; and that petitioner maintains agents in Tennessee and North Carolina upon whom process can be served. The chancellor thereupon enjoined respondent from further prosecuting her action in the Missouri federal court and from instituting any similar suits against petitioner except in the state and federal courts in Tennessee and North Carolina. Respondent did not appeal from this decree. Instead, she filed a "supplemental bill" in the Missouri federal court to enjoin the proceedings in the Tennessee state court. Holding that the com-

mencement of respondent's action for damages gave the federal court "specific, complete, sole and exclusive jurisdiction" which could not be "intrenched upon" by proceedings in another court, the District Court, by an appropriate interlocutory decree, forbade petitioner from further prosecuting its suit in the Tennessee state court and ordered it to dismiss the state suit. This decree was affirmed by the Circuit Court of Appeals for the Eighth Circuit, 117 F. (2d) 100. We brought the case here, 313 U. S. 556, in view of the relation of its jurisdictional problems to those in No. 16, *Toucey* v. *New York Life Insurance Company*, 314 U. S. —, and No. 19, *Phoenix Finance Corporation* v. *Iowa-Wisconsin Bridge Company*, 314 U. S. —.

The limitations imposed on the power of the federal courts by § 265 of the Judicial Code, as we have applied them this day in the *Toucey* and *Phoenix* cases, Nos. 16 and 19, *supra*, govern the disposition of this case. The restrictions of § 265 upon the use of the injunction to stay a litigation in a state court confine the district courts even though such an injunction is sought in support of an earlier suit in the federal courts. Congress has endowed the federal courts with such protective jurisdiction neither generally, nor in the specific instance of claims arising under the Federal Employers' Liability Act. Ever since the Act of March 2, 1793, 1 Stat. 334, § 5, Congress has done precisely the opposite. Because of its views of appropriate policy in the interplay of state and federal judiciaries, Congress has forbidden the exclusive absorption of such litigation by the federal courts. If a state court proceeds as the Chancery Court of Tennessee acted, the ultimate vindication of any federal right lies with this Court.

The District Court was here without power to enjoin petitioner from further prosecuting its suit in the Tennessee state court.

Reversed.

The CHIEF JUSTICE, Mr. Justice ROBERTS and Mr. Justice REED, concurring.

The reasons which led to dissent in No. 16, *Toucey* v. *New York Life Insurance Co.*, 314 U. S. —, and No. 19, *Phoenix Finance Corp.* v. *Iowa-Wisconsin Bridge Co.*, 314 U. S. —, do not exist in this case. There is no federal decree and therefore no need of an injunction to protect the decree or prevent relitigation.